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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 19-22

VANCOUVER

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C-O-N-T-E-N-T-S

VANCOUVER SITTING

(Fifth Day)

PRESENTATION by Professor Mund ...Page 3169

D. Andrew Smith, M.C., B.A., LL.B., LL.M., LL.D. Chairman
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APPEARANCES:

Mr. Paul Davis (in name) Counsel for the Commission
Mr. (No exhibits filed this day) Counsel for the Commission

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THE CHAIRMAN: This morning we have the pleasure and privilege of having with us Professor Mund from the University of Washington, who has very graciously and kindly agreed to come and tell us something about the deposition that has occurred in the United States in connection with this case and make some statement about, and related matters. I think perhaps we might begin by asking counsel to proceed in discussing the matter with Professor Mund.

RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss Leader Selling

--O--

Hearing held(in public) in Room 414 at
the Court House, Vancouver, British Columbia,
Friday, July 9, 1954.

PRESENT:

C. RHODES SMITH, Q.C., M.A., LL.B., B.C.L.	Chairman
Guy Favreau, Q.C., B.A., LL.B.,	Member
A. S. Whiteley, B.A., M.A.,	Member

APPEARANCES:

Mr. Paul Gerin-Lajoie	Counsel for the Commission
Mr. R. M. Davidson	Secretary to the Commission

--O--

THE CHAIRMAN: This morning we have the pleasure and privilege of having with us Professor Mund from the University of Washington, who has very graciously and kindly agreed to come and tell us something about the experience that has occurred in the United States in connection with fair trade and resale price maintenance, and related matters. I think perhaps we might begin by asking counsel to proceed to discuss the matter with Professor Mund.

MR. GERIN-LAJOIE: Dr. Mund, would you please begin by giving us your full name, for the purposes of the record.

PROFESSOR MUND: My full name is Vernon A. Mund.

MR. GERIN-LAJOIE: And where do you live?

PROFESSOR MUND: I am Professor of Economics at the University of Washington in Seattle.

MR. GERIN-LAJOIE: Seattle is your place of residence, also, is it?

PROFESSOR MUND: Yes.

MR. GERIN-LAJOIE: And have you specialized in a particular phase of economics, during the course of your studies?

PROFESSOR MUND: My field of specialization over the past twenty-five years, now, has been the field of government regulation of business, with particular reference to the anti-trust laws and the legislation controlling pricing.

MR. GERIN-LAJOIE: During the course of your studies and your work in connection with the subject you have just mentioned, have you made any particular study of what is known as resale price maintenance?

PROFESSOR MUND: Yes. In the course of my work, particularly during the past ten years, I have made continuing studies of the practice of resale price maintenance, for my teaching, and also for my writing.

MR. GERIN-LAJOIE: And do I understand, Professor, that you are the author of a book called

Government in Business?

PROFESSOR MUND: Yes.

MR. GERIN-LAJOIE: Published by Harper Brothers?

PROFESSOR MUND: Yes, in 1950.

MR. GERIN-LAJOIE: In 1950. I understand a new edition of your book is coming out very shortly, is it?

PROFESSOR MUND: In January, 1955, I believe.

MR. GERIN-LAJOIE: Now, Dr. Mund, the Commission would like, as you already know, to have your views and your reactions to the problem of resale price maintenance, particularly as it exists in the United States, and as you know the problem over there. Would you start by explaining to the Commission what you understand by a loss leader?

PROFESSOR MUND: Yes. Perhaps I could begin by explaining certain aspects of the competitive pricing which I favour. I favour, as an economist, competitive price reductions or competitive price inducements, made uniformly to all buyers by sellers, in order to get business. If supply exceeds demand at a given price, someone reduces prices in order to be able to deal. That is of the very essence of competition. If you cannot find customers at an established price, then your inclination is to reduce your prices in order to be able to deal. That is the very essence of competition. And if we are going to have a competitive system, then we must maintain that business practice -- that is, the

practice of price competition.

I exclude from that what I would call loss leader selling or leader selling -- that sort of business practice. That is what I call genuine price competition, the very essence of our free enterprise system.

I do not favour the business practice of predatory price cutting. In the United States the American Tobacco Company some years ago used its financial power to cut the prices of chewing tobacco, virtually to give it away, in order to eliminate competitors and to get a monopoly of that field. Their price-cut brand was called Battle Axe, incidentally. They did drive out all the other manufacturers of chewing tobacco. I would call that predatory price cutting; and that procedure I do not favour.

Also, I do not favour discriminatory price cutting. I might point out that in the United States there was a case recently under which the Morton Salt Company sold its Blue Label salt to some retailers at \$1.60 a case and to a select few -- that is, five big chains -- at \$1.35 a case. And so that would be a form of price cutting which I would call discriminatory price cutting; and that type of pricing I do not favour.

THE CHAIRMAN: Professor, you have described both those instances as types of predatory price cutting?

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PROFESSOR MUND: Yes, predatory or discriminatory price cutting.

MR. WHITELEY: In your second case your judgment is not based merely on the fact that there was a difference in price?

PROFESSOR MUND: No, it is a difference in price without a valid reason, which could not be justified on the basis of cost saving. It is a discriminatory adjustment in that sense.

And, thirdly, there is a further pricing practice which economists do not favour, namely geographic price discrimination. A multiple unit concern, such as a chain, operating in several communities might cut prices in one community to eliminate a competitor, while maintaining its prices elsewhere. The A & P Company, for example, was found to engage in that sort of practice -- the practice of geographical price discrimination. That is a form of leader selling, or loss leader selling, which I think is unfair, because it does not permit an efficient businessman to survive on his merit.

THE CHAIRMAN: And, again, that was without cost justification?

PROFESSOR MUND: Without cost justification, and transportation differentials.

The problem of loss leader selling centres on the sale of a product below a seller's net acquisition or laid-down cost, as of his place of business.

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Professor Mund

For example, some years ago ^{in 1919} the Federal Trade Commission brought a case against the Sears-Roebuck Company accusing that company of selling sugar at less than its acquisition or laid-down cost. It was found to be engaged in that practice.

Large business firms sometimes do that sort of thing. They sell below their net acquisition cost, or their net laid-down cost. And they do it for the purpose of -- well, they do it to induce people to come into their stores, as a sort of leader, you see. Those would all go into the category of loss leader selling.

MR. FAVREAU: But you are not making provision for special cases such as clearance sales?

PROFESSOR MUND: I would exclude clearance sales, fire sales and close-out sales, and so on.

Here was the Sears-Roebuck Company actually selling sugar below its net acquisition cost, as of its retail store. And it was doing this to bring people to the store. In my opinion that would be true loss leader selling.

The point I wish to make is that I want to define loss leader selling, in the sense in which I use that expression; and, secondly, I wish to illustrate its use. I think there are cases of that -- I really do -- of true loss leader selling. And it may, in certain situations, be a problem -- it really may be. But I think there is a remedy for that, which I shall discuss later.

I do believe that we ought to exclude from

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the question of true loss leader selling the matter of markup. I feel the question of markup -- that is, the markup above the acquisition cost -- is a matter for the internal business policy of the businessman. The matter of how much one should invest, or how many units he should produce, these are his business. The inner workings of the business should be controlled by the businessman himself; and I think that is true in the matter of markups that a retail store should take. I do not think anybody should dictate that to him.

The seller has to recover his cost, and he is under great compulsion to make every product bear its share of cost -- what the traffic will bear. So he is under a natural compulsion always to avoid true loss leader selling; and it is only in the unusual case where it is actually found to exist, in my opinion. It is only in the very unusual situation.

THE CHAIRMAN: Professor, -- and I just want to be quite clear on this -- in your definition you do not include any allowance for overhead operational costs of the business ---

PROFESSOR MUND: Of the business itself.

THE CHAIRMAN: --- in determining what is true loss leader selling.

PROFESSOR MUND: No; I feel that whether a markup should be 1 per cent, to cover your general cost of doing business, or 2 per cent, or 10 per cent -- that is a matter for internal business policy.

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I do not know that one should attempt to tell someone what his markup should be. It is like telling him whether he should produce or not, and how much he should produce, and how much he should invest. I think that is his business.

I feel that that is the case. And I feel that since there is a natural compulsion against selling below acquisition costs, in most cases it is not a problem. However there may be the rare and unusual case where it is a problem. I am thinking, for example, of the Sears-Roebuck sugar case. But I think that could be treated as a problem of predatory pricing, as such; I think it could be. I think that once we permit a government or a manufacturer to dictate internal markups, then we are taking a long step toward an authoritarian system, a system of planning.

And it was Adam Smith, in particular, who said that no man or no group of men is wise enough to tell a person what to invest, or how much to invest, or when to spend, and so on. That was the system against which he spoke so tellingly.

MR. WHITELEY: Some people suggest that the situation has changed considerably since the time of Adam Smith. Do you think the principle still holds true?

PROFESSOR MUND: I think the principles of individual enterprise still hold true -- that if we are going to have an individual invest capital and conduct his business he must be given the

responsibility for it, and he must be given the opportunity to express his own initiative. That is what we mean by private enterprise, by free enterprise. That is what we mean by those terms. That is the system which we feel is efficient and effective in order to get the world's work done.

4 THE CHAIRMAN: And I suppose also, Professor, that your view that no man -- following Adam Smith -- that no body, either governmental or otherwise, is wise enough to tell the individual businessman just how he should operate, would have in mind in this case the difficulty of determining what should be the minimum cost of a particular operator in handling a particular item of his production?

PROFESSOR MUND: That is right. It will vary from community to community, from section of town to section of town, from type of merchandising to type of merchandising, and with regard to the type of service rendered -- that is, whether one applies the principle of cash and carry, or of delivery, or of fancy wrappings, or rug-covered floors, or soft music, or college-educated clerks, with smiles.

That is the question; and that is the great value of our free enterprise system -- that is, individual planning. The individual decides that sort of thing. And I think our system has great merit -- that is, the system of individual planning. Let the individuals decide these things.

THE CHAIRMAN: Thank you.

PROFESSOR MUND: So, I would conclude with that definition of loss leader selling -- and if I may repeat or rephrase it -- by saying that it is the sale of a product below one's laid-down cost, or net acquisition cost, as of a seller's given place of business.

MR. GERIN-LAJOIE: You have explained, Professor Mund, that no authority is well placed to determine the markup of any individual retailer. But does that mean, Professor, that you would not include in your definition of a loss leader any reference at all to the cost of operation of a retailer, for instance, or the cost of his doing business?

PROFESSOR MUND: Well, I feel that it is just too difficult to determine that, and I feel that the cases which are injurious to society or to other businessmen are those cases in which sales are made below the laid-down cost. There is where you really run into the great problem. As I said, there is the Sears-Roebuck case, where a big concern actually sold a product such as sugar below the acquisition cost.

There is the position. You cannot succeed under those circumstances; and that is the problem. If you do find situations like that, then I think we should consider a remedy for them. I do.

MR. GERIN-LAJOIE: And when a retailer sells an article with a very low markup, an unusually low markup in relation to his own practice, you would not call that loss leadering; would you call that by

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some other name, or not?

PROFESSOR MUND: Well, when he takes a very low markup, then he is under compulsion to take a high markup elsewhere. He has got to stay in business. He is in business to make a profit, and when he takes a high markup elsewhere, then he subjects himself to the competition of other people. You see, he is limited there, if he maintains the competitive system. He does not dare go that low, because he has got to make it up elsewhere. He is in business for a profit.

MR. GERIN-LAJOIE: But how is it, nevertheless, that in the United States apparently a number of retailers have had recourse to the loss leadering practice -- quite a lot of them, if I am well informed. And, despite that fact, they have been able to do business, and to do profitable business, over the years.

PROFESSOR MUND: Yes, that is right.

MR. GERIN-LAJOIE: Or is that pushing the situation too far? Would you say that there has been very little loss leadering in the United States over a period of -- well, we will say ten or fifteen years?

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PROFESSOR MUND: I do not think we have useful statistics on the actual amount of loss leader selling. As I have indicated, we have examples of it -- in the case of sugar, in Sears-Roebuck. We have that isolated example. I think that the main problem about which American businessmen complain --

the main problems -- are essentially three in number. And these, in my opinion, are not problems, strictly speaking, of loss leader selling. They are confused with loss leader selling.

MR. GERIN-LAJOIE: There is the problem of discrimination that you have explained.

PROFESSOR MUND: Yes, discrimination -- geographically and personal. And then there is the problem of simply having new merchandisers coming into the field and offering limited services and taking a lower markup. That is the problem we find today in the case of the discount houses competing with the department stores.

In other words, you have the rise of a new type of merchandiser who is taking a lower markup, and the prices are just low, in some areas, in relation to others; and they do not like it. They just do not like it; they do not like this kind of competition.

MR. GERIN-LAJOIE: And that is definitely something you do not call loss leadering?

PROFESSOR MUND: No. The mere fact that somebody else is selling for less than you do does not indicate that there is loss leadering. That is just real competition. And businessmen do not like it. I should say that some businessmen do not like it -- I will put it that way, and I want to underscore the word "some". I will say that some businessmen do not like it. And of course, that is understandable. It forces you to sit up and take

notice and be on your toes, and perhaps lower your own markup; and you do not like doing that if you can avoid it.

THE CHAIRMAN: I suppose the regular merchant usually has a much greater capital investment in his premises and in his equipment and in the stock he carries, than these lower markup discount houses would have?

PROFESSOR MUND: Yes, I think that is true today. Of course during the thirties the main problem was the growth of the chain stores in relation to the small-scale independents. And there was simply a different type of merchandising activity. That was the situation. And the situation today is different in that sense.

THE CHAIRMAN: It is much more difficult for a man with a heavy capital investment to compete with somebody else who has a low capital investment and a low rent structure as compared with the man who is established on a prominent business street with a well established and well lit place of business, and that sort of thing. It makes it rather difficult for the established businessman to compete with the cut-price man under those circumstances, does it not?

PROFESSOR MUND: Yes, it does; it makes it difficult. So often the lower price or the lower markup man -- and I prefer that term to the term "cut price". I think of cut prices or of price cutting in terms of a predatory sense. I like to

think of the low-price or the low-markup man, or if you wish to call him the low-price man, the lower price man or the lower markup man -- typically he does not offer the same range of goods that are offered by the large retailer.

THE CHAIRMAN: Neither the same range of goods nor the same service in connection with the goods?

PROFESSOR MUND: That is right. And that, together with his cheaper place of doing business, enables him to operate at a lower markup.

THE CHAIRMAN: He is able in that way to operate at a lower markup?

PROFESSOR MUND: That is right, yes. And I think the problem currently at least centres on products which are highly advertised, chiefly in the appliances field. That is where the problem is centering right now, where the product is highly advertised and standardized, and the manufacturer assumes a large burden, or a larger part of the burden of selling, through radio, newspaper and TV advertising, as well as the use of demonstrators.

People who are rich and poor, alike, buy it -- an article such as a waffle iron; it does not make any difference; it is the same thing for everybody, you see. The servicing is done by the manufacturer himself. So that there is not much of a retail function left to do. And if there is a large markup there somebody is going to step up and try to do it for less. There is not much of a

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retail function left on some of these things; so somebody tries to do it for less.

Actually, it is interesting to note that some of the large department stores recognize this, and in a way, are maintaining discount departments of their own. I went into Marshall Fields in Chicago last summer to buy a pair of these so-called faded blue denims. I went upstairs -- beautiful rugs, immaculate clerks, lovely surroundings, soft music -- and the price was around \$10.

I said, "My, that is a high price for these glorified overalls". The clerk said, "Well, if you want to go down to the basement you can get them for very much less". So I went down to the basement and there I got faded blue denims for \$2.75 or thereabouts.

THE CHAIRMAN: The same quality?

PROFESSOR MUND: Well, I am not certain about the quality, exactly, but they were essentially the same product -- essentially. And we know that some department stores do that sort of thing. They recognize that, and they try to give a limited service for less. So, in a way, they are maintaining their own discount houses.

THE CHAIRMAN: If there was that much difference in the price for an article of the same quality, the service upstairs must have been pretty expensive.

PROFESSOR MUND: Well, the prices I have given are only approximate, but they are sufficient

for purposes of illustration.

MR. GERIN-LAJOIE: Would you explain if steps have been taken in the United States against loss leadering and these other predatory practices you mentioned?

PROFESSOR MUND: The situation in the United States is not too satisfactory; and in my opinion this situation has promoted the use of resale price maintenance. I think that is a factor. For example, in the Sears-Roebuck case involving the sale of sugar at less than the acquisition cost, the Federal Trade Commission asked for the condemnation of this practice as an accepted method of competition -- that is, the sale of sugar for less than the acquisition cost, without regard to the internal markup.

The court looked at the case and said, "Well, you must show improper motive". You see, the whole thing sort of collapsed. How can you show that Sears-Roebuck had improper motives or injurious motives?

MR. GERIN-LAJOIE: Would you explain under what legislation that case was brought?

PROFESSOR MUND: It was under the Federal Trade Commission Act, which condemns unfair competition. Since the Federal Trade Commission, therefore, by the courts was called upon to show injurious intent, it was not able to do so. You would have to have a letter saying, "I am cutting the price of sugar in order to eliminate the people next door."

You have to have evidence of intent. You

cannot read a person's mind. And, so, since our courts really have been unwilling to go along with the Commission in condemning such competitive price cutting the businessmen, the independent men, have sought protection in some other way.

MR. GERIN-LAJOLE: What was the year of that decision?

PROFESSOR MUND: I have it in my notes and I will look it up. Shall I take time to do it now? Because I think I have it right here. It would only take a minute to find it.

MR. GERIN-LAJOLE: Well, could you tell us roughly what period it was -- was it 1930 or 1940, or later?

PROFESSOR MUND: It was the late twenties or the early thirties; and it was before the great development or use of fair trade legislation, you see. I think businessmen sort of saw they could not do very much there, so they sort of turned with real enthusiasm to resale price maintenance legislation. I shall have to get that information for you later. I think I have it here, but I do not see it at the moment.

MR. GERIN-LAJOLE: What you have given us is sufficient for our purposes.

PROFESSOR MUND: Well, I will give the exact reference later. It is a very interesting case; and I feel if the courts had gone along with the Federal Trade Commission in condemning true loss leader selling we might have avoided some of this great rash of

legislation controlling resale prices absolutely. I think we might have, you see.

MR. WHITELEY: You think the fair trade legislation was stimulated in part by the growth of low-margin operators in that period?

PROFESSOR MUND: In the main, fair trade legislation was the product of the depression, the growth of the chain store, the low markup seller. In the main, that was it. And the growth of the chain stores, further, in our country -- the United States -- was stimulated by unusually low cost prices which they were able to induce, and by the exercise of geographic price discrimination.

In other words, the chain stores did not really thrive on the basis of efficiency alone. There were some unfair practices involved, and that was the basis for our Robinson-Patman Act. It was an attempt to get at those practices which made it possible for the chain stores to grow with such rapidity.

THE CHAIRMAN: You spoke, in the case to which you referred, about the need for proving an injurious intent?

PROFESSOR MUND: Yes.

THE CHAIRMAN: Could you specify what sort of injurious intent was required to be proved?

PROFESSOR MUND: Injurious intent means that -- well, the courts said, in essence, that if I want to give sugar away, what is there to stop it? In other words they said that to have unfair

competition you must show -- or the government must show, or the complainant must show -- that I am doing it with the intent to injure somebody.

THE CHAIRMAN: To injure some other dealer?

PROFESSOR MUND: Yes, some other dealer.

THE CHAIRMAN: Or some other dealers, generally?

PROFESSOR MUND: Yes, some other dealer or dealers generally. Let us say the dealer across the street, or let us say merchandisers generally in the vicinity of the Sears-Roebuck store. The government was told that it was under compulsion to show intent to injure a competitor. And since the government could not really show intent, because it could not read the mind of Sears-Roebuck, the case fell.

THE CHAIRMAN: I was just anxious to get the intent that was required under the American legislation so that we could compare it with the situation we have under our own legislation.

PROFESSOR MUND: It is a very interesting case.

MR. GERIN-LAJOIE: Would you explain what steps have been taken in the United States to protect a retailer against such predatory practices as you have explained?

PROFESSOR MUND: Yes. We really have no legislation in the United States protecting an independent businessman against the practice of true loss leader selling, when it means the sale of a

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product such as sugar at less than the net acquisition cost, taken as such. We have tried to get at the situation in which there is personal discrimination. For example the sale exercised by a supplier -- and that was the essence of the Robinson-Patman Act.

Its purpose was to prevent the sale of a product by a large supplier at a lower price to a large buyer -- at a lower price to a large buyer -- than the price to a smaller buyer, when the price differential could not be justified by cost savings. If there are cost savings in volume buying, that is perfectly legitimate. But the Robinson-Patman Act sought to get at the common business practice of making price differentials, lower prices, far beyond that, simply because the large buyer could throw his weight around, and enforce it. And our Robinson-Patman Act was designed to prevent that sort of thing. But there was a joker put into the law.

MR. FAVREAU: You mean it was to prevent the powerful operator from using that power to obtain prices which ---

PROFESSOR MUND: Yes, preferential prices.

MR. FAVREAU: --- would indicate discounts which were not realistic?

PROFESSOR MUND: That is right. In other words the seller was placed under an obligation to be able to defend his price discounts by cost savings. If he could not do that then he was suspect

and subject to prosecution.

But, as I say, there was a joker put into the law. It was a proviso which has been interpreted by the courts -- unfortunately -- and this proviso states, "However, nothing shall prevent a person from discriminating in good faith to meet competition".

So, on the one hand you condemn discrimination and, on the other hand, you say, "Well, provided however that nothing shall prevent a person from discriminating in good faith to meet competition." And the courts have construed that to mean that, even though it injures competition you still have your right to discriminate in good faith.

So, in large measure the heart has been taken out of the Robinson-Patman Act. In other words the experience of those people who have studied it very carefully is that if you are going to condemn discrimination you must condemn it without regard to good faith exceptions. You must do that; otherwise your discrimination legislation is meaningless; and in large measure that is the situation in which we are today.

MR. GERIN-LAJOIE: Would you give an example of what would be considered as good faith discrimination?

PROFESSOR MUND: The Federal Trade Commission and the Supreme Court in the United States are working on that right now in the Standard Oil of Indiana case, and they are still working on it.

The Standard Oil Company sold gasoline in Detroit to a few retailers at a lower price than it was sold to others; and it was not able to justify this price differential by cost savings. And the Standard Oil Company said, "Well, we cut that price to some retailers and not to others, in good faith, to meet competition." And the Supreme Court as well as the Federal Trade Commission said, "O. K. show it."

MR. GERIN-LAJOIE: What type of competition?

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PROFESSOR MUND: Price competition.

MR. GERIN-LAJOIE: Do you mean in one vicinity and not in the other?

PROFESSOR MUND: In the same town, Detroit. In other words Standard Oil Company -- this was the Standard Oil Company of Indiana case. It took place in Detroit, so far as the facts are concerned -- the Standard Oil Company sold gasoline to several hundred retailers at a certain price, and then it sold the same gasoline, or the same quality of gasoline, to a few retailers at a lower price.

THE CHAIRMAN: Those were in certain selected spots?

PROFESSOR MUND: In the same town.

THE CHAIRMAN: But in certain selected spots?

PROFESSOR MUND: Yes.

MR. WHITELEY: I think some of those retailers are also engaged in wholesaling, are they not?

PROFESSOR MUND: Some of them were engaged in wholesaling, but some of them were engaged in retailing alone. Some were interchanged between wholesaling and retailing. But the facts of the case were that it could be stated that they were engaged in retailing -- at least one of them was engaged in nothing but retailing.

THE CHAIRMAN: The defence was that they did it in those localities ---

PROFESSOR MUND: Those persons.

THE CHAIRMAN: ---to meet competition?

PROFESSOR MUND: Yes.

THE CHAIRMAN: Were there other stations in the vicinity of those people's operations selling at the lower price, which they met?

PROFESSOR MUND: The fact is, we will say, that I got the benefit of the lower price. Let us say that I am across the street from you. You have paid the higher price, and you have been injured by my competition. You were injured by this discriminatory practice. You could not compete under those conditions because people came to me. The Standard Oil Company said, "We gave the low price to the Mund station because Mund had a chance to get the same gasoline, or to get gasoline from some other supplier at that low price."

And that was the defence put up by the Standard Oil Company. The court held, "Well, Standard Oil should be privileged to discriminate to meet a lower price, even though other

independents are injured by that practice." And this decision really takes the heart out of our anti-discrimination legislation.

THE CHAIRMAN: That is, in that case another supplier was willing to supply the filling station at a lower price than Standard Oil was willing to supply it?

PROFESSOR MUND: That was the allegation; that was what Standard Oil said. They are in process of having to prove that, and they are not getting very far very fast.

THE CHAIRMAN: You might think they would have to make that fairly uniform, if that was the actual fact, that if another supplier was willing to supply at a lower price you might think they would have to make the cut fairly uniform throughout the area.

PROFESSOR MUND: Yes, you would think so. Frankly -- and I should not say "frankly"; I would ask to have that word stricken out -- actually, they are having difficulty in proving this defence. That is, Standard Oil is having that difficulty. And the case is still pending. But the principle stands; that is the difficulty.

THE CHAIRMAN: I think we see the idea, as to how the principle might operate.

PROFESSOR MUND: Yes; the principle stands. And if the principle stands, that it is your privilege to discriminate, even though competition is injured, then you are defeating the purpose of your

legislation. Because the purpose of the legislation was to prevent discrimination which injured competition. That is the purpose of it. Otherwise you would not have the legislation.

MR. GERIN-LAJOIE: What was the approximate time of the enacting of that Act?

PROFESSOR MUND: The Robinson-Patman Act was enacted in 1936, during the time of the growth of the chain stores.

THE CHAIRMAN: I suppose also there is difficulty in proving cost justification, in many instances?

PROFESSOR MUND: Yes, it is difficult but it is not impossible.

THE CHAIRMAN: And expensive, probably?

PROFESSOR MUND: It is rather expensive; but many accounting firms in the United States specialize in that particular thing. They make their services available, let us say, to Philco and General Foods and United States Rubber, and so on. It is quite a specialized business.

THE CHAIRMAN: Just to see how it might operate, does that mean that really only the larger companies could afford to engage in an enterprise which might lead to litigation in which they would be forced to account for the cost differential?

PROFESSOR MUND: Yes; many of the smaller ---

THE CHAIRMAN: It is so expensive that the smaller man would find it beyond his means to contest?

PROFESSOR MUND: Yes. But the Federal Trade

Commission has prepared a handbook setting out the factors to be considered in proving cost differentials; and I think a good accountant could follow it.

MR. FAVREAU: It is a recent publication?

PROFESSOR MUND: Not too recent; I think probably it was in the forties. But I know there is a handbook out. I know they are still working on it.

MR. FAVREAU: They are working on it?

PROFESSOR MUND: Yes, apparently so, under the new administration.

THE CHAIRMAN: Does that mean that they feel the difficulty occasioned by the expense involved?

PROFESSOR MUND: Yes, they want to make it easier for people to comply with the law.

MR. GERIN-LAJOIE: Could you tell if there has been any other federal legislation in relation to these problems?

PROFESSOR MUND: Well, the Clayton Act itself in 1914 sought to strike out the problem and to prevent geographic price discrimination. As I said, the A and P Company was found to be engaging in the practice of cutting prices in certain localities to injure local merchants. It was found that it made prices in certain localities which bore no relationship to the cost of transportation, you see. And the Clayton Act in 1914 was enacted to prevent that sort of thing.

But, here again, the Clayton Act had in

it that proviso which was proved by court interpretation to be a joker.

There must be discrimination between certain localities which injures competition. That is always in there. You have to prove discrimination, and prove injury to competition. When the effect is substantially injury to competition -- and we are not going to consider trivial things. But, as I say, when the effect is substantial injury to competition it is prohibited. And that is the Clayton Act of 1914 -- geographic discrimination.

Then there was this proviso which said, "However, nothing shall be done to prevent a person from discrimination in good faith to meet competition." So all the A and P Company would have to do under the Clayton Act was to say, "Well, look, we were simply meeting competition."

MR. GERIN-IAJOIE: Is it your opinion that in such Acts there should not be any good faith clause at all, or that they should be worded differently?

PROFESSOR MUND: In my opinion the Robinson-Patman Act sought to get at that good faith problem. Many people in the Congress thought it should be stricken out entirely, that is, the good faith proviso. And then some Senator got up and said, "We must put it in, because the milk producers in New Jersey want it."

THE CHAIRMAN: That would not have been a Senator from New Jersey, would it?

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PROFESSOR MUND: And it was put back in. But it was put back in in this way -- and this is very interesting, I think. The Congress stated explicitly -- and there is no doubt about this; everybody in the field understands it in this way -- that the good faith provision was put in, but it was to be simply a procedural aid only. That is, as you gentlemen who are learned in the law will know, the Robinson-Patman Act condemns price discrimination which injures competition. All right.

11) Then there is a proviso put in: "However, a person can rebut a case -- that is, a prima facie case -- against him by saying that he has shown good faith." And the Congress has said that if I am accused of discrimination which injures competition, then I should be privileged to rebut that case. I can say that I did it in good faith. That is my answer. And it is all right if you can show that. But then, you see, the government should have the privilege of coming back and saying, "Well, even if you did it in good faith, there is injury to competition." And that is what we want to stop. That is the way everybody thought the law had been written, and should have been interpreted.

But the Supreme Court went off at a tangent, and it is all bogged down in deep water now in the Standard Oil case -- which is not yet settled. Once you begin to permit discrimination, even though it injures competition, the thing is up.

MR. GERIN-LAJOIE: So your opinion is that

good faith should not be, by itself, a sufficient defence?

PROFESSOR MUND: Right.

MR. GERIN-LAJOIE: When an injury to competition has been proved?

PROFESSOR MUND: That is right, because if you wish to preserve competition that is the whole purpose of it. Otherwise you would not have the legislation.

MR. WHITELEY: Do you think there is a distinction between injury to competition and injury to a competitor?

PROFESSOR MUND: Well, some people make that distinction. I, personally, would not want to be that charitable. I feel that if there is discrimination and somebody is injured by it that person is entitled to relief. I think it is a law to make it possible for efficient people to stay in business, if they are efficient.

MR. GERIN-LAJOIE: Is there any other federal legislation on the subject?

PROFESSOR MUND: No, I believe not.

MR. GERIN-LAJOIE: Do I understand there is legislation in the various states?

PROFESSOR MUND: Yes, many of the states have legislation prohibiting discrimination; but with this proviso: "In good faith, to meet competition." And the state laws have been interpreted to observe the liberty of the person to discriminate to meet competition. So that the state legislation

is dead.

MR. GERIN-IAJOIE: Are you talking about so-called fair trade legislation, or something else?

PROFESSOR MUND: No, I am talking about the state legislation which is comparable to the Clayton and the Robinson-Patman Acts -- state laws which condemn price discrimination.

The state of Minnesota had a very interesting law which made it impossible for a creamery to pay more for butterfat in one locality than it did in another locality, after taking due account of transportation differentials. This big creamery would go into a locality where a co-operative was working and bid up the price, and hold down the price where it had no competition, and just ran the co-operatives out of business.

So the State of Minnesota passed a law saying that it would be illegal to discriminate in the purchase of butterfat or any other product by paying more in some areas than in other areas, after taking due account of transportation differentials: period.

That law went to the Supreme Court and the Supreme Court held it to be unconstitutional because it restrained the liberty of a person to discriminate in good faith to meet competition. And since the Fairmont Creamery case, which was in the late twenties, the State of Minnesota has not done a thing to enforce this anti-discrimination statute; and that holds true of the forty-eight states. The anti-discrimination statutes in the forty-eight states

are dead.

THE CHAIRMAN: Have practically all the states anti-discrimination statutes?

PROFESSOR MUND: Practically all the states have anti-discrimination statutes; but they are dead.

MR. GERIN-LAJOIE: When you say they are anti-constitutional, do you mean against the constitution of the United States?

PROFESSOR MUND: Yes.

MR. GERIN-LAJOIE: Not against the federal legislation itself?

PROFESSOR MUND: No. The fifth and fourteenth amendments of the Constitution of the United States say that no act shall be taken by the federal government over a state government to deny life, liberty or the property of a person. And here it was held that you had a liberty to discriminate.

THE CHAIRMAN: In good faith?

PROFESSOR MUND: In good faith, yes. And that is stretching the word "liberty" too far, in my opinion.

THE CHAIRMAN: I suppose that even in that case, in Minnesota, if it could have been shown that a higher price in the area in which the co-operative was competing was instituted for the purpose of putting the co-operative out of business, it would still have been able to get ---

PROFESSOR MUND: Yes, because they were simply meeting competition.

THE CHAIRMAN: It would not be simply meeting competition if you showed the purpose was to put

them out of business.

PROFESSOR MUND: Yes. The trouble was that you could not show that purpose unless you had some sort of statement or letter saying, "I am doing this to put that man out of business." In the absence of such a statement, then my motives are innocent. I am simply trying to do business there, and I have to bid up the price to get the cream. Or I might have to bring down the price to sell bread -- do you see my point? Until you can get something on me, where I tell somebody, "I am going to get that guy" ---

THE CHAIRMAN: In other words, you have to get some fairly solid evidence?

PROFESSOR MUND: Yes. You have to have fairly solid evidence or otherwise the court will not find illegal motives. This, of course, makes the good faith idea or the motives idea impossible to use in the field of business regulation.

In my opinion in the field of business regulation we have to study business practices and effects. We cannot go into the question of motives. Perhaps that is all right in connection with criminal law, or certain other fields, about which I know very little. But in business practice we have to consider what the practices are, and their effects. But you cannot go into the field or the question of clairvoyance and motives.

MR. GERIN-LAJOLIE: Professor Mund, I believe you have been considering up to now

particularly price discrimination. Is there, or has there been any legislation to cover loss leadering, or ---

PROFESSOR MUND: In order to get at the ---

MR. GERIN-LAJOIE: They can be price wars more particularly at the retail level. I understand that the price discrimination is mostly in the vertical rather than the horizontal line, from the wholesaler to the retailer, or from the manufacturer to the wholesaler. Am I right in that, that price discrimination happens mostly when some goods are sold by a manufacturer to a wholesaler or retailer?

PROFESSOR MUND: Yes; discrimination exists between customers of a manufacturer, or in relation to a competitor of a manufacturer, you see. And that is where the discrimination usually arises. We have sought to get at the forms of discrimination, geographic and personal. But our efforts have not been very successful, in the main. We have no direct legislation against loss leader selling as such, as I have defined it.

MR. WHITELEY: You are speaking about the federal level.

PROFESSOR MUND: Yes, the federal level -- and the state level, too, for that matter.

MR. WHITELEY: Well, you have the Acts with respect to selling below cost.

THE CHAIRMAN: Minimum markup.

PROFESSOR MUND: I would have to check all those statutes again, to be sure whether for the most

part sales below cost statutes have in them the proviso, "And done with the intent to injure competition." For the most part, I would have to check all those laws again to be sure whether that proviso was or was not there. But, I believe it is there.

THE CHAIRMAN: We have been informed that in some thirty states they have legislation of that type which prohibits sales, with certain exceptions, below cost -- usually plus 5, 6 or 10 per cent markup.

PROFESSOR MUND: But with the added proviso, "With intent to injure competition." I believe for the most part that is there. I think for the most part that is there.

THE CHAIRMAN: What is your view about the operative effect of those statutes?

PROFESSOR MUND: Well, my study of them indicates that -- certainly in the State of Washington, which I have studied very carefully -- the law is inoperative. I believe it is inoperative -- the laws are inoperative in most of the states -- because of the difficulty of proving that a store had the intention of injuring competition.

In my opinion the sales below cost statutes which exist in some thirty states are used primarily by trade groups themselves to harass a low-markup seller. A state group, or a district, or a state attorney will call upon a low-markup seller, or even a loss leader seller, and say, "Look, there is this legislation. We can take you to court on it,

and you will be under obligation to show your costs and justify them. Why not do the right thing and stop it."

Still the legislation is used primarily by the trade groups themselves to attempt to police their own industrial group.

MR. GERIN-LAJOIE: Is it used to a large extent in that manner?

PROFESSOR MUND: To the extent that they are used at all, in my opinion they are used in that manner.

THE CHAIRMAN: Do you know whether the use in that manner is effective? That sort of thing would not appear on any public record, I suppose?

PROFESSOR MUND: No. Actually I think probably it is effective among smaller concerns. I think that they attempt to -- when they attempt to take on big chains such as Safeway or A & P they find themselves involved in a court case, and they want to avoid that. So that I think the legislation has not been effective against the big chains.

THE CHAIRMAN: It has been effective only in cases where the persons against whom it is directed are unwilling or are unable to face the cost of litigation?

PROFESSOR MUND: That is right. I think for the most part the big chains really do not want to engage in true loss leader selling, for the most part. They want to sell shortening with a low markup, but I do not think they want to sell it for

less than the laid-down cost. I do not think the big chains want to do that. They endeavour to engage in a reputable type of merchandising I think, nowadays.

14) THE CHAIRMAN: With regard to the harassing efforts, would you think that legislation may be used in that fashion in cases in which it is by no means certain that the individual who is harassed has actually broken the terms of the statute?

PROFESSOR MUND: I think so, yes. He is simply a low markup person, and they do not like that type of competition. They feel that he is out of line.

THE CHAIRMAN: And he is forced into line in cases where he is not breaking the statute?

PROFESSOR MUND: Yes; there is much evidence to indicate that. The federal anti-trust division, as a matter of fact, has brought perhaps a dozen or more cases against wholesalers and retailers who have been found to have used the law for that purpose -- for bringing people into line.

I know in one California case it was found that the trade association kept sending out reports: "Do not sell eggs below a certain price." You must not do that. And it has been established that this is the proper price. So I would say that there is evidence to indicate that the laws have been used to bring about monopolistic restraints on price competition.

THE CHAIRMAN: Referring to eggs, if the

price was fairly uniform so that they were able to say, "It has been established that this is the proper price" in general, that would still not be effective, would you say, with regard to a particular merchant who might be able to secure eggs at a somewhat lower cost, and might have other means which would enable him to sell at a lower price? But you think that even in those cases, pressure would be exercised upon him?

PROFESSOR MUND: Yes.

THE CHAIRMAN: And he might be forced into line, for fear of litigation?

PROFESSOR MUND: The practice is to strike upon or hit upon a sort of common price -- for gasoline at the retail level, or for eggs, or for sugar, or for cigarettes -- and to look upon anyone else who is selling below that price as a chiseller or an unethical dealer.

THE CHAIRMAN: Would you say it is used, then, as a harassing method to prevent any price differentials?

PROFESSOR MUND. Yes.

THE CHAIRMAN: Eliminating price competition, in other words?

PROFESSOR MUND: To the extent that the practice is used, they seek to find a common level, one price for an area. That is what they seek to do.

THE CHAIRMAN: By this harassing method?

PROFESSOR MUND: Yes.

MR. GERIN-LAJOIE: Now, Professor Mund, have you any resale price maintenance legislation in the United States, either federal or state legislation?

PROFESSOR MUND: Yes. Some forty-five states have resale price maintenance legislation. And, in order to permit the making of resale price maintenance contracts in interstate commerce, we have a federal law, the Miller-Tydings amendment, which sanctions the making of fair trade or resale price maintenance contracts in interstate commerce, when a local state authorizes such a contract.

And then we have the more recently enacted McGuire Act which adds the non-signer clause legislation.

MR. GERIN-LAJOIE: Would you explain what that clause is?

PROFESSOR MUND: The non-signer clause?

MR. GERIN-LAJOIE: Yes.

PROFESSOR MUND: The non-signer clause is a provision in the state and federal legislation which declares that when a manufacturer of a branded product makes a resale price maintenance contract with one wholesaler or one retailer, and gives notice thereof, every other wholesaler or retailer of a given state is bound by that contract, even though he has not signed it.

THE CHAIRMAN: The method, as I understand it, is that where the state law contains the non-signer clause, the McGuire Act makes that

effective in interstate commerce?

PROFESSOR MUND: Yes, that is right.

MR. GERIN-LAJOIE: Would you say if all state legislation has that section providing for the non-signing clause?

PROFESSOR MUND: I believe that all the forty-five states having fair trade legislation include the non-signer clause in the state statute. California was the first state to devise such a feature, the non-signer clause; and the California provision was copied, even to the mistakes in punctuation, by most of the other states. So I would say that all of the forty-five states have it.

However, in three of the states their Supreme Courts have found that the non-signer clause is unconstitutional to their police powers. So that presumably the non-signer clause is inoperative in those three states at the present time.

MR. GERIN-LAJOIE: When was the first statute of that type providing for fair trade practice passed?

PROFESSOR MUND: Fair trade in the United States, I believe -- California enacted the first statute in 1930. But the non-signer clause was, I think, in 1933. And it was not until the non-signer clause was added that fair trade became a potent device in our country.

In the United States the non-signer clause is looked upon as being the heart of fair trade.

MR. GERIN-LAJOIE: Now, in practice would

you explain if your fair trade legislation applies to all goods or to certain classes of goods more particularly -- I mean in actual practice. The legislation I understand does not make any distinction between classes of goods, does it?

PROFESSOR MUND: It applies to all branded merchandise. It is a permissive statute. A manufacturer of a branded product is permitted to fair-trade his products if he so desires.

Actually, not all sellers of branded merchandise choose to use the legislation, not all of them. In particular resale price maintenance is not used in the sale of seasonal or highly stylized merchandise, such as women's dresses. The business practice in connection with merchandise of that kind is to advance the price as much as you can at the height of the season, and then to reduce the price as the season advances so as to clear the stock.

After the 4th of July, or something like that, the prices come down sharply. Then, secondly, resale price maintenance is rarely used in connection with such branded products of automobiles, television sets, radios, electric washers -- because of the fact that it can be circumvented through excessive trade-in allowances. Very frequently it is not used on high priced or high-ticket lines, in which you have a trade-in as a basis of merchandising.

MR. GERIN-LAJOIE: Do you mean that even large companies such as, let us say, Westinghouse

will not apply the fair trade legislation on washing machines?

PROFESSOR MUND: They may not. If there is a trade-in problem involved they frequently do not.

MR. GERIN-LAJOIE: In practice you say they frequently do not?

PROFESSOR MUND: In practice they frequently do not, where there is a trade-in involved, because a local dealer can circumvent that price by an excessive trade-in allowance. They may have a suggested list price, but that is as far as they may go.

THE CHAIRMAN: What is the position with regard to cigarettes?

PROFESSOR MUND: I do not know too much about the merchandising practices in connection with cigarettes.

THE CHAIRMAN: I have seen some statements to the effect that cigarettes have not been fair traded.

PROFESSOR MUND: Yes.

THE CHAIRMAN: I wonder if you are familiar with that situation.

PROFESSOR MUND: In some states there are minimum markup laws for cigarettes, and in some cases the cigarette wholesalers make frequent use of these sales-below-cost statutes. Also, at the wholesale level there appears to be little price competition in the case of cigarettes. Cigarettes

are sold by the producers on their own price basis. Every manufacturer has the same factory price. The cigarettes are sold freight-allowed to destination; freight-allowed-prepaid; so every wholesaler gets the same cost price. Then it is common for many wholesalers to decide on a uniform markup, under various state laws. And so the variation in the price of cigarettes, to the extent that it exists, occurs at the retail level.

THE CHAIRMAN: Yes; and I think Canadian travellers would think that they have found some variation.

PROFESSOR MUND: Yes.

THE CHAIRMAN: At the retail level.

PROFESSOR MUND: Yes, at the retail level. Apparently efforts have not been made to control at that level.

THE CHAIRMAN: It would seem, so far as your knowledge goes, that attempts to control it have not been under fair trade legislation but under these other statutes which have been referred to.

PROFESSOR MUND: Yes, these other statutes and business practices -- the practice of the zone system of selling, with the price identity by the major producers of cigarettes. So you get a uniform factory price and a uniform wholesale price. It is held right down to that level. At the retail level, where the markup is very little, anyway, you do find variation.

And, one other point. Fair trade

legislation is not used in the case of branded products which are perishable, such as branded hams, for example.

THE CHAIRMAN: Swift's Premium Hams?

PROFESSOR MUND: Yes; the Swift Company would not use it there, interestingly, because -- well, they have to cut the price in order to move it. You either sell it or smell it, as they say. And they have to cut the price in order to move it; and no one wants to use resale price maintenance there either at the wholesale or the retail level. They realize that this stuff has got to be moved into consumption, and that you have to cut the price to do it. You cannot wait.

MR. GERIN-IAJOIE: Would you say there is a very limited field of articles where ---

PROFESSOR MUND: I made a study of the articles which are mainly sold under resale price maintenance. Would you like me to read that list?

MR. GERIN-IAJOIE: Just the categories, if you would, please.

PROFESSOR MUND: The categories -- the principal fields in which fair trade is important are the following: automotive parts and accessories, alcoholic beverages, books, music and publishing materials, clothing and wearing apparel, cosmetics, drugs -- it is very prevalent there -- electrical appliances, steam irons, Toastmasters and Mixmasters.

THE CHAIRMAN: Small appliances?

PROFESSOR MUND: Yes, small appliances.

Then, there are certain home furnishings, housewares, hardware and paint, jewelry, watches and silverware, photographic supplies, stationary and office supplies, textiles, in some cases tobacco and smoking accessories, toys and sporting goods.

MR. GERIN-LAJOE: I notice that you mentioned clothing and wearing apparel?

PROFESSOR MUND: Yes. For instance, this suit I am wearing, Botany 500, was sold under resale price maintenance. Botany 500 is a fair traded product. This means that every retailer in the state of Washington must sell this at a certain minimum price or, under our present legislation, at a given stipulated price.

THE CHAIRMAN: A maximum, as well as a minimum?

PROFESSOR MUND: Yes. The present legislation makes it possible to set the minimum price or the stipulated price.

MR. FAVREAU: That is for men's wear, principally, I suppose?

PROFESSOR MUND: Do you mean the use of resale price maintenance?

MR. FAVREAU: Yes.

PROFESSOR MUND: I believe so, yes. I think women's wear is too much stylized; it is not used there.

MR. GERIN-LAJOE: Then, Professor Mund, would you care to give your opinion as to the value and the effect of resale price maintenance in the

United States, as you know it?

PROFESSOR MUND: You have referred to the value and the effect?

MR. GERIN-LAJOIE: Yes, in your opinion, as to the working of resale price maintenance.

PROFESSOR MUND: Perhaps I can get at your question fairly briefly and in an objective fashion if I may do so -- and I shall try to do so -- by indicating the arguments made for the practice of fair trade, and then the observations with respect to those arguments, or possibly the arguments against the practice. I can group my discussion under six categories. I think I can do it briefly.

MR. GERIN-LAJOIE: Very well, you may proceed.

PROFESSOR MUND: The fair trade people suggest that the practice of resale price maintenance actually promotes competition. They point out that you cannot fair trade a product unless there is a similar one. So that the presumption is that there is competition then, and private brands come into use. Many outlets are encouraged, so it is said that the practice promotes competition.

The experience we have had shows clearly I would say that resale price maintenance restricts and destroys price competition at the retail level.

If a group of merchants selling baby food, for example, were to agree on the price of prepared baby foods, it would be illegal under our Sherman

Act, the Federal Trade Commission Act, and also under your combines law. Whereas, if the same group of merchants in the province of British Columbia or the Dominion of Canada were to be privileged to fix a price under resale price maintenance legislation, or to have resale price maintenance contracts, then you would have a situation where the practice would be legal and enforceable in the courts. So that actually resale price maintenance legalizes business practice which otherwise would be illegal both under the common law and under the statute law.

And there is also a tendency in our country for several manufacturers of a fair traded product, such as baby food or canned meat for babies -- to take an example -- to have the same wholesale price as well as the same resale fair trade price. So that not only is competition restrained on the part of all retailers of a given product, but there is a tendency for competition to be restrained among the manufacturers of like products.

MR. FAVREAU: That is done through price leadership?

PROFESSOR MUND: Yes, price leadership and price following.

THE CHAIRMAN: I think perhaps this discussion will take some little time.

PROFESSOR MUND: Perhaps I should not go into it thoroughly.

THE CHAIRMAN: We would like to have you discuss it thoroughly, but I believe our reporter may be reaching a state of exhaustion, and it might be wise at this time to have a brief recess, if that would be satisfactory to all concerned.

--- Recess.

--- Upon resuming.

THE CHAIRMAN: Professor Mund, you were beginning to give us some of the reasons of those who support resale price maintenance and fair trade laws.

PROFESSOR MUND: Yes, and the arguments of those who oppose the practice.

THE CHAIRMAN: Yes.

MR. GERIN-LAJOIE: Professor, you were dealing particularly with the first aspect of resale price maintenance, which you have called competition.

PROFESSOR MUND: Yes. I concluded that the use of the practice operates to restrict and to restrain price competition at the retail level; and, in general, I would say that the opponents of the practice believe that while there may be some evils which should be corrected, the restraint of price competition at the resale level is too big a price to pay, or that it is going too far in an effort to curb certain evils which may exist.

MR. WHITELEY: Would you say there is any general agreement among American economists on that point?

PROFESSOR MUND: I believe that in general American economists are more unsympathetic towards resale price maintenance, in the tariff than they are towards many other business practices, such as basing points or zone pricing.

Briefly, I would answer the question by saying that I believe a great many American economists look with disfavour upon the practice of resale price maintenance.

THE CHAIRMAN: Would you say it is the preponderant economic view among economists?

PROFESSOR MUND: It is difficult to state that, not having made a survey or not having issued a questionnaire. But, on the basis of the literature I would be inclined to say that that is a fair statement.

Then, a second point commonly made by the advocates of resale price maintenance is that the practice makes possible mass distribution. It is said that mass distribution is necessary in order to have mass production or large-scale production of standardized articles such as steam irons, and the like.

It is felt that if steam irons are to be distributed on a widespread basis there must be many retail outlets. And by having an attractive retail markup, common for all, it will be possible to interest a great many retailers to take on the sale of steam irons, for example.

It is also reasoned by some that price

competition, in the case of certain branded articles such as steam irons, leads to a merchandising monopoly, that extreme price competition brings a few low-markup dealers to the forefront and others are driven out of the market, it is sometimes said.

It is said that you have a situation where a few may control the market. However, there is little statistical evidence on this point. During the thirties it was alleged by the concerns wanting these sales-below-cost statutes that those statutes were necessary in order to prevent monopoly. What do they mean by that?

19) The evidence indicates that what they meant was that in order to prevent the growth of chain stores -- in other words, chain stores were called a monopoly, you see. Now, today ---

THE CHAIRMAN: Were they afraid that chain stores would drive the independent storekeeper out of business?

PROFESSOR MUND: Yes, that was the situation. The situation was not one of a fear of a monopoly as such; it was the fear of the growth of a different type of merchandising arrangement. And so, likewise, today people claim that price competition might lead to merchandising monopoly, and in doing so they really have in mind that price competition may lead to the growth of, let us say, low-markup discount houses, to the disadvantage of the established department stores or the high-markup retailers.

It is not monopoly they fear, but it is the growth of the low-markup retailer. I think that is what they fear, really. Of course, actually, you see this problem every day. When Canadian lumber enters the United States the domestic producers throw up their hands in horror and ask for the government to intervene. And here, when somebody else comes along and offers to sell a product for less, the tendency is to go to the government and get relief.

Ordinarily the businessman does not like government intervention, but here they are clamouring for it. It is a very curious situation. But I would say that, in further criticism of this point, the markup which is commonly offered is high and it is attractive to retailers but this tends to keep many inefficient retailers in the field. Also, the more efficient retailers who are able to sell for less find they are not permitted to sell for less; and in order to be competitive with everybody else what they do is to go in for cost raising methods of competition, such as expensive wrappings, gift wrappings, elaborate store furnishings, many services such as delivery, high class clerks, expensive store signs, soft music -- all these things which really do the consumer very little good and which many people really do not want.

And so I would say that the practice of resale price maintenance may induce cost-raising methods of doing business. Actually very few people

like competition, and when you have the growth of competitive areas -- the chain stores in the thirties and the discount houses today -- there is a tendency to resist, if you can. And I think we must look upon the efforts to get resale price maintenance, in part as an effort simply to resist competition, which everybody would like to do, if he could. The question is whether he should.

THE CHAIRMAN: When you say that very few people like competition, do you mean that very few people like to be forced to compete themselves?

PROFESSOR MUND: On price, that is right. Very few businessmen, I should say, really like to see price competition, if they can prevent it. The thing is that in many cases you cannot prevent it, so you adjust yourself to it.

THE CHAIRMAN: Most of them express faith in competition.

PROFESSOR MUND: Yes, they do. I think businessmen really do -- and I think wisely so. I think they see clearly that it is sound public policy, because if we do not have it then the alternatives are not attractive. If we do not have effective competition, then we are likely to have some form of public control or public ownership, and the alternatives are far worse, I am sure. So that certainly, in our country, in the United States, businessmen publicly declare their faith in and their support of competition. They really do.

THE CHAIRMAN: But in practice ---

PROFESSOR MUND: In practice they think it is a good thing for the other fellow, but for themselves they may not like it. But that is only human nature. They sometimes have difficulty in seeing the forest for the trees. But I think that on principle they realize that it is a sound principle. They may not like it under certain circumstances, but ---

MR. WHITELEY: In mentioning this aspect of the problem, you first dealt with the argument that resale price maintenance is necessary to secure mass distribution?

PROFESSOR MUND: Yes.

MR. WHITELEY: Have you any comment to make on that particular point?

PROFESSOR MUND: Well, I think the making of attractive markups does encourage widespread handling. There is no doubt about that. However, that is only one side of the coin. You have to look at the other side, too. In all these things it is just a matter of weighing the case for and against. I believe the case against in this instance outweighs the **advantages** which may be found in mass distribution, namely, the practice tends to keep in the field many people who really are not efficient. Then the high markup just attracts everybody to try the product. So that too many people enter the field and too many people are sort of kept on when they really are not efficient.

Also it induces cost-raising methods of doing business, which I think are not in the public interest.

MR. FAVREAU: It may also explain the high rate of bankruptcy.

PROFESSOR MUND: It may very well do that, because people are attracted in and they find that they really cannot do it. Then the high markup attracts the carrying of the product. The chain stores have gone into drug products, you see. And the dime stores have gone in for drug products. The drugstores do not like that. So that you do get a mass system of distribution; but the question is whether that is really in the public interest -- whether it is in the public interest or not.

MR. GERIN-IAJOIE: Professor Mund, can you say if the actual practice in the unfair traded states shows that discount houses may go for a smaller distribution of goods and put out of business, or drive out of business -- it may be **not** as bankrupts, but just as disinterested retailers -- a certain type of business which exists. Do you know what I mean?

PROFESSOR MUND: I think this may be the appropriate time to discuss that subject. Frequently when the high markup retailer sees the business going to the low markup dealer they attempt to resist that, and they have certain means at their disposal -- they have certain tools or instruments which they can use. They can refuse to buy from the

manufacturer; they can refuse to push; they can refuse to demonstrate. They have certain means at their disposal; and the use of these tools or these techniques by high-markup retailers may very well cause consternation on the part of the manufacturer. He may be concerned about that.

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The question is how do we appraise this situation? How do we appraise it? Well, we might discuss this matter of the use of high-markup attractive stores to introduce new products or to demonstrate new products. Commonly, in introducing a new type of sausage, or a soup, or an appliance, a manufacturer may select an outstanding department store and use it as a means of introducing the product. They like to do it that way, they really do. And the large department store may say, "Well, if we are going to do this thing we would like to have a little protection by way of price. We would hate to introduce it and then see the house down the street selling it for a low markup and getting the business, after we have done this. How about this situation?"

Well, in the first place I think many of the manufacturers seek out the better class of stores to do this sort of thing. And it is a problem -- it has been a problem in our country -- because they have not been willing to use the smaller merchants for the same purpose.

In 1936 in the Robinson-Patman Act the Congress provided by legislation that when allowances

are made for demonstrators and sales promotion in the large stores -- and they are the ones who tend to get these allowances -- they must also be allowed on a professional basis to the smaller retailer, too. We had to adopt legislation to make that possible.

Now, that means this, that if a large store buying \$1,000 worth of merchandise gets a demonstrator's allowance of \$100, then the small store buying \$100 worth must be given an allowance of \$10.

THE CHAIRMAN: Even though there is no demonstration?

PROFESSOR MUND: That is right. And then it is up to the manufacturer to see that he gets something for his money. In other words, the small merchant takes the position that he would like to demonstrate. They would like to do these things, too, but they are not getting the opportunity. And we have had to provide by law that they be given the opportunity.

So that it seems to me that this argument that high markups are necessary to ensure demonstration is not a sound argument. I think that anybody selling a product would like to demonstrate it, if he had a chance, or would be willing to demonstrate to the extent that that is necessary.

But, for the most part, I think this demonstration mostly takes the form of display. There is not very much teaching done. I think the book of directions or the ads do most of the teaching; I do.

And it seems to me that the problem is largely one in which the large retailers have at their disposal a certain device which they can use to put fear into the heart of the manufacturer. And the manufacturer is concerned about that.

Now, my thought is that maybe this is simply, in part at least, a form of competition. That is the way in which competition operates. Somebody can do it for less, and he comes into the field; and this has always hurt the established people. It has always hurt them. Nobody likes to see it happen, and it is always resisted if possible.

The wool people did not like to see cotton come in. That was back in the time of Adam Smith, you see. And today the wool people in Australia are reluctant to see the artificial fabrics coming in the market -- and so it goes.

It is just a matter of resisting. You try to get a tariff or you try to get resale price maintenance. You try to do all these things. The thing is that you have to appraise it as to whether it is in the public interest. That is what you have to do.

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And I think that these large high-markup dealers would like to suppress or restrict this new competition, if they could. But the question is whether they should be permitted to restrict it. That is the question -- whether they should be permitted to do so.

MR. GERIN-LAJOIE: Regarding articles which

are already accepted by the public, is there any evidence that the increasing number of discount houses in the unfair traded states has brought about a smaller distribution of those articles, comparatively, to the states where they have fair trade legislation?

PROFESSOR MUND: It is difficult for me to answer that question at the moment because -- well, my observation is that the discount houses are operating about as actively in the fair trade states as in the unfair trade states. Surely they operate in the State of Washington. We have fair trade there, and the discount houses operate there.

THE CHAIRMAN: Are they fairly numerous?

PROFESSOR MUND: I have not made a statistical check but I do know the number in Seattle, for example.

THE CHAIRMAN: And they seem to be doing a good deal of business, do they?

PROFESSOR MUND: They seem to be doing a good deal of business, yes. One can go into a discount house and acquire a fair-traded product such as a steam iron, and encounter no difficulty whatsoever.

So any sort of attempt to make a study of the operations in the State of Washington, for example, or in the District of Columbia, would be difficult. Because you could go into the State of Washington, the city of Seattle, and buy a product at a discount house.

MR. GERIN-LAJOIE: Can you explain how the discount house can work and do business in fair traded states; is it because the legislation does not cover that point, or because the legislation is not enforced?

PROFESSOR MUND: I would say the discount houses operating in the State of Washington -- in Seattle, for example -- would be able to get fair-traded products to sell at reduced prices despite the state legislation. First of all, the manufacturer may wink at the practice. Its sales department has a certain quota which it wants to move out, and the discount house can open up a volume outlet; it is the home for some products. They can find a home for them quickly. The discount house can take it; and so the fair trade concern can wink at the practice, actually.

Then, secondly, the manufacturer in fair trading his products may distribute through a wholesaler, and the wholesaler can make these products available without the knowledge of the manufacturer, you see. And in some cases the discount houses may even get the product from another retailer who is selling under fair trade prices.

Anyway, it appears that these discount houses, even in the fair trade states, are able to get merchandise.

MR. FAVREAU: In large volume?

PROFESSOR MUND: They appear to be able to

get merchandise in considerable quantities.

THE CHAIRMAN: Have you enough data on that, Professor, to have come to any conclusion as to the effectiveness of fair trade laws in maintaining prices? I realize that that is a pretty broad question.

PROFESSOR MUND: Yes, that is a broad question. However, I do believe that in many cases, in many situations, fair trade laws are being enforced; they are.

THE CHAIRMAN: Effectively?

PROFESSOR MUND: Yes, effectively. They are being enforced effectively. And there are fair trade people who do everything in their power to see that they are enforced. Fair trade bureaus and trade association groups are doing that. In many fields they are being enforced. Whether a person can buy, let us say, toothpaste in a discount house I do not know. It seems to me that the discount houses are operating mainly in certain fields where you have highly standardized products and where the selling is done mostly by the manufacturer himself, or the service is done by the manufacturer, and where there is very little by way of the retail function left.

The service is rather high -- such as in a steam iron or a mixmaster or something like that, where the retail function is not really very significant any more. If you have got the cash or can go to a finance company, you might as well go

to a discount house.

THE CHAIRMAN: I suppose, with regard to toothpaste, that the retail function is not very high; it is a low priced product.

PROFESSOR MUND: It is a convenience, I imagine, in that case. I believe the evidence in respect of the discount houses is that they are operating in all of the forty-five states which have fair trade legislation. I believe there is evidence to indicate that.

THE CHAIRMAN: Does the evidence indicate whether they are increasing or decreasing in number at this time -- let us say for the last couple of years?

PROFESSOR MUND: For the last couple of years?

THE CHAIRMAN: Yes.

PROFESSOR MUND: I believe the evidence shows that they are increasing.

THE CHAIRMAN: Substantially?

PROFESSOR MUND: I cannot say that. I have no statistics on that. But I believe the evidence I have indicates that they have been increasing for the last five years, let us say.

THE CHAIRMAN: Do you think the existence of fair trade laws has any influence on the appearance or the growth of discount houses?

PROFESSOR MUND: Yes, I do. I think that they are really a product of fair trade -- a child of fair trade, let us say, in a way. If it were not

for these high markups, and the opportunity to sell the product for considerably less than that, they really would not be in the field.

THE CHAIRMAN: You mean that because merchants generally are subject to fair trade prices other people are encouraged to come in as discount houses?

PROFESSOR MUND: Yes, and they see they can operate for less, and they do it. And so I would say that the practice of fair trade has sort of brought about the existence of this product. I do not think a consumer -- if a consumer can shop around and buy, we will say, an electrical appliance at a competitive price then I doubt whether he would go to the fourth floor and surreptitiously try to get that appliance. I do not think he would do that. Rather, he would tend to go to an established firm and do business.

I do not think he would go downtown to the tenth floor of a building and do business in a discount house. It is not an attractive form of merchandising, in my opinion.

THE CHAIRMAN: That is, they do business strictly on a price basis --

PROFESSOR MUND: Strictly on a price basis, that is right.

THE CHAIRMAN: Their prices being sufficiently low that, although their premises may not be very attractive or easy to get at, people will come because the price is so attractive?

PROFESSOR MUND: That is right.

THE CHAIRMAN: And that is the only reason?

PROFESSOR MUND: I think so, yes. And I think many people must go with a certain degree of reluctance, too. They would like to do otherwise.

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MR. GERIN-LAJOIE: Do you know of any statistics showing that the higher number of discount houses has brought about a low distribution of certain standard lines, or would you have any statistics on that point?

PROFESSOR MUND: I think it would be very difficult to say, because discount houses operate, I believe, in all the forty-five states having this legislation. I do not think you can pick out the District of Columbia and say, "Look what discount houses have done to us there."

MR. GERIN-LAJOIE: But, even in connection with the fair traded states you would not have any statistics as to the effect of discount houses?

PROFESSOR MUND: No. All we know is that they have grown, and people are buying steam irons. And I should imagine that the General Electric Company is selling an increasingly large volume of steam irons each year. I should imagine that their business is growing, too. I should imagine that their national sales are growing in connection with these electrical appliances. Yes, I should imagine that that is so, that they are growing, that their sales are growing. And somebody is doing the business. I think it would be difficult to give

statistics on this.

MR. GERIN-LAJOIE: Professor Mund, would you care to give your opinion on the argument which has been put forward sometimes to the effect that resale price maintenance provides small retailers with protection against some unfair practices like so-called price juggling and price cutting, and so on?

PROFESSOR MUND: I think there is truth in the statement that fair trade has prohibited, in the case of branded merchandise, loss leader selling by established merchants.

Now, why is that so? Well, no one can lawfully sell a product for less than the fair trade price. So that you cannot engage in loss leader selling. It just cannot be done. It just cannot be done. But it seems to me that in trying to remedy an evil which is limited in time and in place we have gone the whole way to destroy all price competition. I think we have gone too far. Yes, I think we have gone too far. And it seems to me that the complaint which legitimate merchants may have is one which should be handled by itself and not by destroying the whole institution of price competition. That is my view.

In so far as there is true loss leader selling, and in so far as there is this geographic price discrimination, and in so far as some persons enjoy discriminatory personal prices, you see, those are evils which should be handled on their merits.

And it should be noted, too, that even when you have resale price maintenance, and even when loss leader selling has been curbed, there is still the problem of the large retailers and wholesalers getting discriminatory purchase prices. So that frequently the small merchants who want protection are not getting at the real source of their difficulty.

MR. GERIN-LAJOIE: But in such case do I understand that everyone would be obliged to sell at the same price, but that certain retailers would make larger profits?

PROFESSOR MUND: Yes.

MR. GERIN-LAJOIE: Larger than others?

PROFESSOR MUND: Yes. In other words, if some of the large chains can hammer down their buying prices they still will have a tremendous competitive advantage over the independent merchant.

MR. FAVREAU: Because, even if they sold at the same price they could use the higher margin of profit for publicity, advertising, and all those things which would not be available to the others?

PROFESSOR MUND: Yes, and they can use them for loss leader selling of non-branded merchandise. It does not control the whole problem of loss leader selling. It only limits it to the branded area. You still have the whole unbranded area to operate on, and with your own private brands.

MR. FAVREAU: But this margin of profit

they could pass on to the consumer otherwise?

PROFESSOR MUND: Yes, or keep it for themselves.

MR. GERIN-LAJOIE: Would you say that resale price maintenance regarding those unfair practices is an evil only for the consumer, in a way, or also for the independent merchants themselves?

25) PROFESSOR MUND: Do you mean fair trade legislation?

MR. GERIN-LAJOIE: Yes, resale price maintenance.

PROFESSOR MUND: Certainly I do believe it is an evil for consumers because it destroys price competition at the retail level where there is quite a margin for price competition to operate.

MR. GERIN-LAJOIE: But what about the other merchants?

PROFESSOR MUND: Other merchants?

MR. GERIN-LAJOIE: Yes.

PROFESSOR MUND: I feel that other merchants frequently are deluded into the idea that they are getting protection from it when, in fact, they are not, and for a number of reasons. First, resale price maintenance does not get at the problem of the discriminatory buying prices which the large distributors can get.

Resale price maintenance legislation does not get at the problem of loss leader selling in

the case of non-branded items. Resale price maintenance legislation does encourage the very widespread handling of products, you see. So that chain stores and dime stores are taking on the sale of drug products.

And then the problem comes of controlling entry. That is the next step -- to prevent others from getting these products. And no solution to that problem has been found as yet.

Also, there is the problem of the growth of private brands which is promoted by this practice. Finally, there is the problem of why markups which are available to certain distributors -- that those markups can be used to cut unduly prices elsewhere. So that if you get a good line of fair traded products you can take on some other products and really sell them at a very low markup, or no markup, or less than cost.

THE CHAIRMAN: Professor Mund, you might explain what you meant when you referred to the effect of fair trade legislation on the use of private brand products. I think you indicated that it promoted the use of private brands?

PROFESSOR MUND: I think it has. I do. It is reported that Macey's have more than 1,400 items branded with their own trademark. And it is possible for some department store such as Macey's to find that a fair traded product gives them something to work against. They can sell it. They can say, "Yes, we have this toothpaste; but

we have Macey's own toothpaste, which meets all laboratory tests and the recommendations of the Consumers Research and the Consumers Union, and is sold at a very much lower price." You see? So that there is an opportunity for a large retailer to get in there and do that in certain situations. There is.

THE CHAIRMAN: We have had some business organizations make representations to us that the absence of fair trade might lead to private brands and might lead to some other developments. Your view seems to be to the contrary effect, at least in so far as private brands are concerned.

PROFESSOR MUND: I think fair trade promotes the production and sale of private brands. I do. Because here is an opportunity for someone to render a similar service on a like product at a lower price or a lower cost.

THE CHAIRMAN: Then, perhaps I had better leave this other matter until later.

PROFESSOR MUND: I think what I have said is true. Then, I have found a further reference here in my notes, that in 1951 it was found that 85 per cent of the nation's supermarkets now sell health and beauty aids as compared with only 37 per cent ten years ago.

So you have others moving into the field, you see, which reduces the volume for the legitimate drugstores. And they may very well find that others are simply taking over their business. Others like

that sort of business because it is a high-profit item, and they like to get it if they can.

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MR. GERIN-LAJOIE: Do you think that is a reason why supermarkets go into that business of ---

PROFESSOR MUND: In part, yes. It is a high markup item and people may be induced to buy toothpaste when they are buying groceries, too. It is a complex of factors.

THE CHAIRMAN: There is a certain amount of impulse buying when they are in a grocery store?

PROFESSOR MUND: Yes, there is a certain amount of impulse buying there, too. And there is one further point. We have been discussing the problem of fair trade and the things which it does not do for the merchant. There is one thing it does do for the merchant and that is to restrict his freedom. It destroys his freedom. No longer is he free to act as an individual, which of course strikes at the very heart of our individual enterprise system.

THE CHAIRMAN: It interferes with ---

PROFESSOR MUND: Individual initiative.

THE CHAIRMAN: --- with the retailer's right to sell his goods at whatever price he likes. Is that what you mean?

PROFESSOR MUND: Yes. That is the very essence of our individualism. What we are doing with this legislation is to restrict the individual's right to his freedom, his freedom of enterprise.

THE CHAIRMAN: It has been suggested to us --

and I think this argument has been made in the United States frequently -- that the manufacturer of branded articles has an interest in the good name of his branded product, which needs to be considered, as well as the retailer's right as the owner of the goods themselves; and that there are really two proprietary rights which are involved.

It would seem that you have to draw a distinction between the proprietary right of the owner of the brand and the proprietary right of the retailer, both of whom have individual interests at stake.

PROFESSOR MUND: Yes.

THE CHAIRMAN: And, after all, you have to distinguish between those two rights and decide which should be preserved in the interests of the public.

PROFESSOR MUND: It is sometimes said, "I do not have to buy Colgate's toothpaste" -- if I am a retailer. You have the right to choose your own customers. I do not necessarily have to buy it. But the facts are that if I am going into business today then in most cases I think independents have got to handle branded merchandise.

The ordinary businessman cannot have his own private brands, can he? He cannot have his own toothpaste or his own face powder. Macey's can do that, yes. Sears-Roebuck can do that, yes. But most independent retailers cannot have their own brands.

MR. FAVREAU: They could not promote them.

PROFESSOR MUND: No, they have not got the money and they have not got the facilities. And, moreover, people call for the advertised brands, for the most part. That is the result of advertising. So if you are going to preserve the right of people who go into business in this country you almost have to be able to handle advertised products.

THE CHAIRMAN: Professor, I would like to have your views, if you have considered the matter, on the question I was raising as to the right of the manufacturer for the protection of his brand name.

PROFESSOR MUND: His brand name?

THE CHAIRMAN: That is, as against the right of the retailer to sell goods which he has purchased from the manufacturer, as he sees fit.

PROFESSOR MUND: In all my studies I never have found a good example of low markup selling or low-price selling which injured the brand name of a branded product. I have found no examples of that at all. All my studies show that low prices for branded merchandise simply encourage people to run and get them.

THE CHAIRMAN: So far as the consumer is concerned?

PROFESSOR MUND: So far as the consumer is concerned, yes. I have not found examples where low featured prices, low markups, have caused people to think poorly of a product. I have not

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found examples of that.

In all the discussions I have had with fair trade people the only example they have been able to give me, which they cite, is the case of the Ingersoll watch.

MR. FAVREAU: The Ingersoll watch?

PROFESSOR MUND: Yes. And they have not been able to show clearly to me that the Ingergoll watch went off the market because somebody cut its price. I have a feeling that the dollar watch went off the market because of inflation. You could no longer make a dollar watch. Or there may have been some other reason. I do not know the facts about the dollar watch. However, that is the example they give me -- the Ingersoll watch. And I would like to have some student write a term paper on that subject some day, to investigate the matter.

MR. WHITELEY: Actually it was the Waterbury watch, was it not?

PROFESSOR MUND: The Waterbury watch?

MR. WHITELEY: We followed it back some distance.

PROFESSOR MUND: Why did it go out of existence, do you know?

MR. WHITELEY: Well, there were a number of factors. If you look into the history of watchmaking you will find that there was a discussion with the Waterbury Watch Company. Actually the Ingersoll watch came right down to the period of the war.

PROFESSOR MUND: I do not think they have

evidence to show clearly that it went out because of low price selling on the part of retailers. Do you think so?

MR. WHITELEY: If you like, I will send you such references as we have to this matter. I would let you have such material as we have been able to find.

PROFESSOR MUND: I would like to see that. However, that is the only reference I can find in which it is alleged that there is damage to a trade name.

THE CHAIRMAN: In the mind of the public.

PROFESSOR MUND: Yes, in the mind of the public. And my study of trademark law indicates that the function of trademarks is to show the origin of ownership. According to my knowledge of our own legislation, the purpose of trademarks was not and is not to give the owner power to control a price; that is not the purpose of trademarks. So the owner of a trademarked product, being privileged to sell the product for a price which is satisfactory to him -- in my opinion that meets all the requirements that the trademark right might give him. It is just to show the origin and ownership, to prevent the passing off of somebody's product for your own.

THE CHAIRMAN: What do you say about the effect of low markup selling by certain retailers and the value of the trademarked product in the eyes of other retailers?

PROFESSOR MUND: I think the main problem, the main fear of the manufacturers is that low markup dealers selling at low prices will tend to increase their volume at the expense of the high markup and high priced dealers. And the high markup people may refuse to handle or refuse to sell, or boycott, or something like that.

And to that extent the product will disappear from certain channels of consumption. To that extent it might. And my thought is that it is a real problem for the manufacturer to see certain established retailers being unwilling to push or to handle his products because of the competition of the low markup retailer. It is a problem for them.

I just question whether they should be given any relief in this case, because it seems to me that is the very operation of our competitive system. I just question whether we can hold it, or whether we should try to hold it.

THE CHAIRMAN: Would it be your view that the competitive system will, itself, work out a solution?

PROFESSOR MUND: I think we will tend to work out a solution, yes. And if we can centre our attention on the things which are really unfair we should allow the normal operation of the competitive forces so long as they operate openly, aboveboard and uniformly. Let the thing operate. See how it operates. Strike out the unfair features of it, the

things which are clearly unfair. But the mere fact that somebody else has a lower markup than you have does not provide a basis for restrictive legislation, in my opinion. That is the operation of the competitive system. If we want competition we have to see it operate.

If you are selling wheat on the board of trade you must stand by and see me offer wheat for less, when I want to move it. And the only thing you can do is to come down in line with my price.

THE CHAIRMAN: Unless the government handles it.

PROFESSOR MUND: Unless the government handles it, yes. That is true of securities, too. If you purchase securities at one price today, tomorrow I am sure you would be very reluctant to see them sold for less. But you may have to do so. That is the way things work out.

THE CHAIRMAN: We have seen it, some of us.

PROFESSOR MUND: Yes, perhaps so. So I just question whether the high markup retailer should be given protection here, or whether the manufacturer should be given protection here. So all of the process is carried on openly, aboveboard and uniformly. I just believe that it is an aspect of our competitive system.

MR. GERIN-LAJOIE: Dr. Mund, would you consider more specifically the interests of the consumers? It has been said before this Commission

that -- well, the consumer does not like to see the prices change every day. When someone has bought a certain article at a certain price he does not like on the following day to see that it is being sold so much cheaper elsewhere. What would you have to say about that?

PROFESSOR MUND: I daresay there are those situations. When I buy, we will say, a security I dislike waking up tomorrow morning and seeing that I could have bought it for less. I do not like that either. But I do not know that we should fix the prices of securities because of that fact.

It is true that people certainly and frequently find that if they had waited a little while they could have bought for less. But that is just one aspect of our system under which prices reflect the changing forces of supply and demand.

Now, sometimes it is said, "Well, the consumer has benefited because he does not have to shop around. He saves time. He can make a budget. He knows what it is going to cost him today and tomorrow, both here and there." But it seems to me that that is a sort of forced solicitation for the interests of the consumer.

I think I should be privileged to decide that, and not to have some retail store decide for me that I do not have to shop around. Indeed, the very essence of competition is the procedure of shopping around - a situation in which you do shop around and that you do give up your trade, if you

Professor Mund

can get a better price. That is the way competition works.

It is all a matter of alternatives, you see. The thing I fear is that once you permit someone to fix markups then the next step will be to have the government come in and see whether those markups are excessive or not. That is possibly the next step.

MR. GERIN-LAJOIE: Now, what would you say of the view that the value of a certain article is minimized in the eyes of the consumer when it is being footballed, as it is said? The price changes from one day to another and the consumer would take the view that the article is of lesser value. Do you think that argument has any value? For instance, the Sunbeam Mixmaster has been mentioned before this Commission as selling at, we will say, \$60. If it is being brought to \$50 by a certain retailer or \$45, then some customers or consumers may think that the article is no longer as good as it was originally.

PROFESSOR MUND: Or else they may think that the other price was too high.

MR. GERIN-LAJOIE: That is so. I am just asking for your view.

PROFESSOR MUND: Well, I think there may be something in that. But I do think that people's ideas towards products can change with the price and still not be injurious. For example, when eggs are 90 cents a dozen we use few eggs and we think

very highly of eggs. The same is true of butter. We use it very sparingly. We spread it very thinly when it is selling at 90 cents a pound.

Then, in the spring the chickens lay more eggs and eggs are cheap. The result is that we have eggs three or four times a day, or perhaps two or three times a day. We use lots of butter; and our attitude toward these items changes.

THE CHAIRMAN: And we still think highly of them?

PROFESSOR MUND: We still think they are important food items. It is just cheaper and more abundant. I am inclined to think that the view of the consumer would be, not that the produce is no good, but that maybe one price was too high, that they are paying too much for it over there.

MR. GERIN-LAJOIE: On the whole, it is your opinion that resale price maintenance is not a good remedy for some of the evils you pointed out at the beginning of your testimony; or would you find that there is some other remedy which might be put into an act?

PROFESSOR MUND: As we have discussed, I do believe there are certain competitive evils operating in the business world. I do not think we can sit by and adopt a simply strict laissez faire or do-nothing attitude because competitive rivalries do lead to certain unfair practices and certain abuses.

We have mentioned those abuses, namely,

(1) true loss leader selling, to the extent that it may exist; (2) individual or personal price discrimination, and (3) geographic price discrimination.

My view is that resale price maintenance attempts, in part, to get at these problems and, in part, to curb real competitive selling. And in getting at these problems it destroys the practice of price competition entirely, which is undesirable for the economy.

If we are going to have free enterprise, a free enterprise system, then we must have price competition as a feature of it. Otherwise, this system will not work. Price competition is a very essential mechanism in the free enterprise system. If you do not have it, you do not get a balancing of the forces of supply and demand. You do not have a smooth working of the system. Then you have people turning toward alternatives such as public ownership or public control.

I feel, therefore, that resale price maintenance is too big a price to pay for an effort to get at certain evils. And secondly, it really does not get after the main evils, as we have discussed them.

MR. GERIN-LAJOIE: Would you suggest some other remedy?

PROFESSOR MUND: I feel that we should attack the evils directly; and that any capitalistic country would be well advised to have legislation

condemning price discrimination, geographic or personal, when there is proven injury to competition.

30)

Price discrimination, in all economic literature, is defined as a tool of monopoly. It is a sign or indicator of monopoly. In a highly competitive market, such as your grain exchange, or your central market, you do not have price discrimination. Economists generally identify monopoly and price discrimination as Siamese twins. So I do believe that an effort should be made to get at the problem of price discrimination as such.

Secondly, I think it would be wise to get at the problem of true loss leader selling, as such. And to that end I would recommend the adoption of legislation condemning discrimination when it takes the form of the sale of a product at less than the net acquisition cost.

MR. GERIN-LAJOIE: Would you make certain exceptions?

PROFESSOR MUND: When there is injury to competition.

MR. GERIN-LAJOIE: Would you make certain exceptions to that, let us say, for perishables?

PROFESSOR MUND: Perishables; but, as a practice, I would condemn discrimination when it takes the form of geographic discrimination, and when it takes the form of discrimination between or among persons and, thirdly, when it takes the form of discrimination between or among commodities. And

I would get at the latter problem by condemning it when it takes the form of the sale of a product, such as sugar, at less than its net acquisition cost, when there is injury to competition -- and that without regard to intent, to injure competition.

THE CHAIRMAN: That is, when there is control of a product, regardless of intent?

PROFESSOR MUND: Yes, that is right. The essential thing is whether there is injury to competition. We can debate whether it should apply to a competitor or competition. But I think that is not the essential point. The point is to secure an area of agreement that we want to preserve and maintain competition.

If there is injury to that, I think we should consider it. Otherwise we are not doing our job to maintain and preserve competition, which is what your Combines Act seeks to do, and what our anti-trust law seeks to do -- that is, to preserve and maintain fair competition, aboveboard competition. And I think the way to do that is to consider the evils as such when they are found to exist and base legislation upon them accordingly and not simply destroy the institution itself, the institution of price competition by restricting it entirely.

MR. GERIN-LAJOIE: I think that is all I have to ask.

--- Recess.

--- Upon resuming.

THE CHAIRMAN: I believe Mr. Whiteley has some questions he would like to ask.

MR. WHITELEY: Professor Mund, a number of those who have appeared before the Commission and who have advocated the return to some system of resale price maintenance have said that they did not desire legislation in the nature of the fair trade acts in the United States, but what they wished was to have the right given to the manufacturer to enable him to exercise power to distribute his products to such retailers or other distributors as he saw fit -- in other words, the right of the manufacturer to withhold supplies for whatever reason he might determine.

PROFESSOR MUND: Yes?

MR. WHITELEY: In your view would the recognized right to a manufacturer of that nature be less powerful than the control a manufacturer may exercise under fair trade laws in the United States, or more powerful?

PROFESSOR MUND: Well, in the first place I think it would be a little less powerful because it would not have the non-signer feature. The manufacturer would be under the obligation to go out to every distributor and get -- you are saying would he be privileged to make a contract, or just to exercise his power to refuse to sell? It is simply exercising his power to refuse to sell?

MR. WHITELEY: Yes, on any ground.

THE CHAIRMAN: On any ground that he thought was ---

PROFESSOR MUND: On any ground which he thought would be sufficient?

THE CHAIRMAN: Yes.

PROFESSOR MUND: Yes; well, I would say that that would be of lesser efficiency or effectiveness -- of lesser effectiveness or efficiency than resale price maintenance legislation, simply because experience has shown that for most products, most branded products, it is exceedingly difficult to police that sort of thing. It is exceedingly difficult to police it.

MR. WHITELEY: If you were supplying the trade directly, then it would not be so difficult?

PROFESSOR MUND: That is right.

MR. WHITELEY: He would have full knowledge in his own possession?

PROFESSOR MUND: I think some of the manufacturers supply the retailers directly. Some shirt manufacturers do, and they can watch that very easily -- they can watch it easily. But if you supply the wholesaler, the wholesaler in turn sells to thousands of retailers; and it is difficult to police that sort of thing by refusal to sell. Because you can refuse to sell the wholesaler, and then the wholesaler, in turn, has to refuse to sell to the retailer. And it is difficult to police, I think. It is used; it has been used. But in the United States the advocates of fair trade believe

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that they want more than that. They want more than that.

My own opinion is that there is no question about the legal right of a trader to sell or not to sell, as he may desire. But certainly our own legislation adds, "When not in restraint of trade." And I think the right can be abused very definitely. And if it is used to effectuate a monopolistic control at the retail level then of course the ordinary common law private right loses its significance. The common law private right was simply to sell or not to sell, as my business judgment might dictate. It was never developed or considered in the sense that I could use it to effectuate a monopoly. Never in the common law, in my opinion, was that developed as a right -- I mean in the medieval markets and fairs.

MR. WHITELEY: In what sense are you using "monopoly" in that context?

PROFESSOR MUND: Monopoly would result in the fact that all retailers of a given product would be selling at the same stated price. There would be no price competition at the retail level. And that would be a situation brought about by the practice of the manufacturer in refusing to sell.

MR. WHITELEY: That was the power that was suggested?

PROFESSOR MUND: Yes.

MR. WHITELEY: The individual action by the

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individual manufacturer?

PROFESSOR MUND: Yes, there is no doubt about the individual right of a trader to choose to sell or not to sell as he may desire. But I do not believe he has a common law right to use that to effectuate a monopoly, because he could not. Monopoly was condemned by the common law. Monopoly was illegal under the common law. Conspiracy was illegal under the common law.

MR. WHITELEY: This would not necessarily involve any element of conspiracy?

PROFESSOR MUND: Well, there is a conspiracy there, in this sense, that I am offering to sell you this product on the condition that you do not cut the price. So there is an agreement. I make that not only with you but with every other retailer, so that there is, in effect, a conspiracy; and it could be so considered. Certainly the district court in the Bausch & Lomb case so held. It so held in that case.

In the Bausch & Lomb case the district court and subsequently the Supreme Court condemned the use of the refusal to sell when the result was horizontal price fixing at the retail level.

MR. WHITELEY: From the viewpoint of actually taking action, would refusal to sell by the manufacturer be a simpler step than steps necessary under the fair trade laws in the United States?

PROFESSOR MUND: Would you repeat your question, please?

MR. WHITELEY: Well, if the only action taken is one by a manufacturer in refusing to sell, that is a purely private action on his part ---

PROFESSOR MUND: Yes.

MR. WHITELEY: Under the fair trade laws, does he have to initiate some form of court procedure in order to bring power to bear on the retailer who he considers has offended?

PROFESSOR MUND: He has that privilege of doing it. Whereas under the refusal to sell he does not have that privilege.

THE CHAIRMAN: He does not need it.

MR. WHITELEY: But which is the simpler form of action?

PROFESSOR MUND: For him?

MR. WHITELEY: Yes.

PROFESSOR MUND: Well, I have a feeling that in the United States most manufacturers exercising fair trade prefer the legislation. It is much easier and much more effective. It is much easier.

THE CHAIRMAN: Does that apply to goods which they manufacture or sell to jobbers and wholesalers particularly, because of the difficulty of the cutting off process?

PROFESSOR MUND: Yes, that is correct; if the product is sold and shipped direct as, for instance, in the case of men's shirts, if they are sold by the manufacturer direct to the retail store such as Hudson Bay or Woodwards, then it would be

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fairly easy to administer and police. It would be. And the technique of the refusal to sell could be used most effectively to control resale prices, I think.

THE CHAIRMAN: It would be a very simple and effective means?

PROFESSOR MUND: Yes, very simple and effective under those conditions to do it.

THE CHAIRMAN: But it is in the fairly wide range of products where the manufacturer sells through jobbers and wholesalers that the fair trade laws are more effective?

PROFESSOR MUND: That is right. Refusal to sell has been used most successfully in the United States in the distribution of metal products and gasoline, because there the tendency is to sell direct to certain outlets -- not to use wholesalers. It has been used effectively there -- always, though, subject to prosecution, you see.

THE CHAIRMAN: That is, the oil companies have their own distributors and they deal direct with the retail outlets?

PROFESSOR MUND: Yes.

MR. FAVREAU: In non-fair-traded states or in states where ^{the} non-signing clause has been found to be unconstitutional, is it the experience that loss leadering has been practised to any great extent as against what may have been done in the fully fair trade states?

PROFESSOR MUND: Of course, I think it

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would be difficult to ---

MR. FAVREAU: Or are there any statistics on the point?

PROFESSOR MUND: It would be difficult to get statistics with regard to non-branded products in the first place. I do not think we have any knowledge on that -- for example, the sale of packaged sugar.

MR. FAVREAU: I am referring to branded lines.

PROFESSOR MUND: Branded lines. Then, your question is with respect to branded lines, as to whether there is evidence that the loss leader selling is less.

MR. FAVREAU: As to whether it has been greater in the non-fair traded states than it has been in the fair traded states.

PROFESSOR MUND: Well, I do not think I have any information on that. But certainly I think one could conclude that in the fair trade states resale price maintenance has prevented and does prevent loss leader selling -- unless it may be employed by discount houses where it is under the table. And I have no evidence on that, you know.

But, so far as legitimate outlets are concerned, they all sell at the same price. So there cannot be any loss leader selling or, if there is, it is subject to prosecution right away, you see. And it would just be a question then of to what extent there are under-cover deals.

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Whereas, in the unfair traded states it would be out in the open, would it not, pretty largely? It would be out in the open there.

I think one would be forced to conclude that resale price maintenance has reduced the problem of loss leader selling. I think that that would just follow, because it destroys competition: period.

MR. FAVREAU: Just to enlarge upon that point, has it been found as a matter of fact that in non-fair traded states there has been any extensive loss leadering as a result of the absence of fair trade?

PROFESSOR MUND: I believe there is no evidence to show that.

THE CHAIRMAN: I rather gathered from your earlier statements that there was not any great volume of loss leadering, as you have defined it, anywhere in the United States?

PROFESSOR MUND: Correct.

THE CHAIRMAN: You mentioned one or two instances; but I gathered that you did not think there was very much of it?

PROFESSOR MUND: That is correct.

THE CHAIRMAN: As you have defined it.

PROFESSOR MUND: Correct. The main problem was simply sales by lower markup retailers -- which was a form of competition which was in process of unfolding itself -- limited service stores offering products with less service. It was a form of

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competition that was developing, and the established merchants did not like it.

THE CHAIRMAN: We can believe that to be true. Then, there is one other point which has been raised previously by other people. It has been argued that the abolition of resale price maintenance which took place here at the end of 1951 is likely to lead to manufacturers establishing their own retail outlets in order effectively to maintain prices. I was wondering if that sort of problem had developed in the United States, or if you have had occasion to consider the problem in your studies. Could you offer any opinion upon that as a likely result of the absence of resale price maintenance?

PROFESSOR MUND: Yes. Well, I can give an analogy, possibly, which would deal with your point. In the Standard Oil of California case there was involved the issue of exclusive dealerships.

Standard Oil of California would go to an independently owned gasoline stations and say to them, "We will give you Standard Oil gasoline provided you buy tires, batteries and accessories." That was practised on a fairly wide scale.

The government brought action under the Clayton Act, condemning it as a restraint of competition. The law condemns exclusive dealerships or tying arrangements. The court held that since these contracts covered a substantial area, a substantial

amount of business, they were forbidden.

In that case the Standard Oil Company alleged that if they were not privileged to make the se agreements with independents, to take all their lines, what they would do would be to build up their own gasoline stations. And the courts recognized that that was a possibility. They said, however, that that was not their worry or their problem.

Since the decision in the Standard Oil case of California, I do not believe the evidence has shown that the refining companies have gone more extensively into the ownership of their own outlets. I do not believe that has worked out at all. I do not think there is any sound basis to show that that has happened in the past. Whether it will happen in the future, I cannot say; but I think there is no evidence for believing that it would work out that way.

THE CHAIRMAN: That is, you think that the fear expressed to us, that the absence of the right of resale price maintenance here in Canada might lead to manufacturers establishing their owned and operated retail outlets, is not justified by past experience, so far as you have found out?

PROFESSOR MUND: So far as I have been able to observe it, that would be so. And I think they would find a great many headaches in running their own retail stores too. Their job is to

manufacture, to develop and to innovate. I doubt if they would want to take on anything further.

THE CHAIRMAN: Well, there are some manufacturers who do operate their own retail outlets?

PROFESSOR MUND: I believe Eastman Kodak Company is one of them.

THE CHAIRMAN: Apparently the headaches are not too great for them?

PROFESSOR MUND: No. At the same time, they sell their products to independent firms. They do that. And then, of course, the petroleum companies have gone into their own gasoline stations. They do. And they likely have a few, for various reasons. I do not know -- this is just a question a person would have to analyze, as to whether or not they should do it. That is an open question.

I would not say that the entrance of manufacturers into the retail business in the United States has created any problem for us -- that is, any real problem.

THE CHAIRMAN: If they did so, if the manufacturers did enter into the retail field on their own account in a large way, have you considered what the economic effects of that development might be?

PROFESSOR MUND: Well, of course we have a case pending in California right now. The federal government is seeking to require the Standard Oil Company of California to sell off its **retail** stations. It is alleged in the government's

complaint that the retailing business may be done at a loss, and that they are simply operating this to freeze out competition.

THE CHAIRMAN: In that particular field of gasoline selling the refining company operating retail stations might operate a number of them at a loss for the purpose of freezing out competition?

PROFESSOR MUND: That is the allegation in that particular case. They would make their profit on the wholesaling.

THE CHAIRMAN: And to keep their wholesaling sales up?

PROFESSOR MUND: Yes, and then take a very low markup or no markup at all at the retail level in order to squeeze out the independent competition.

THE CHAIRMAN: I should think the courts would have a problem of deciding whether the motive was to freeze out competition or merely to improve their own sales at the wholesale level.

PROFESSOR MUND: Yes. It is a difficult case. It has been pending for five or six years, and I do not know what will happen to it.

Then, as you know, the Aluminum Company of America was accused in the aluminum case of engaging in the cost-price squeeze of holding up the price to fabricators and then it, itself, taking a very low markup at the fabricating level, to the detriment of the other fabricators.

So that the problem may arise, when

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manufacturers do enter into another level of distribution -- there may be a problem there. We have to recognize that there may be a problem. To what extent a manufacturer might do it because he could not engage in resale price control, I do not know.

THE CHAIRMAN: The consequences, if they did, you say, might be the creation of certain problems which do not exist where manufacturers remain in that field exclusively. I suppose the consequences might not all be good, at least?

PROFESSOR MUND: That is correct; the consequences might not all be good because they would be operating at different levels and would play one level off against the other, to the detriment of the people at a given level.

THE CHAIRMAN: That is, they might create a difficulty quite apart from the fact that they would probably put a number of retailers out of business?

PROFESSOR MUND: Yes, quite apart from that; there would be the problem of showing only consolidated reports and possibly operating one subsidiary at a loss and making a profit elsewhere. You would run into all sorts of problems there. I do not know that that should be really a worry at this time, in the picture.

THE CHAIRMAN: So far as your studies have gone it does not seem to be something that

would arise on a serious scale?

PROFESSOR MUND: There is no indication of that. For example, in our non-fair trade states where manufacturers have gone into their own retail outlets, I know of no activities there. In the non-fair trade states I know of no indication that manufacturers have sought to develop their own retail outlets.

THE CHAIRMAN: And, in general, I suppose the fair trade laws have been operating in most of the states for an average of about twenty years?

PROFESSOR MUND: For about twenty years, yes, since 1933. And so, certainly, with respect to three states where there has been no fair trade legislation, and where people refuse to sell at their own peril, yet the thing operates. The thing operates there.

THE CHAIRMAN: Well, Dr. Mund, we wish to express our thanks to you for coming here and giving us this very lengthy and very frank and, I think, one may say this quite enlightening discussion or exposition of the number of problems you have had occasion to study at length, and which are on our doorstep and are causing us a certain amount of troubled mind at the present time.

It was very kind of you indeed to come. As I say, we appreciate it very greatly. I might add that it is the sort of thing which we in Canada have come to expect from American citizens who are able to contribute something for our

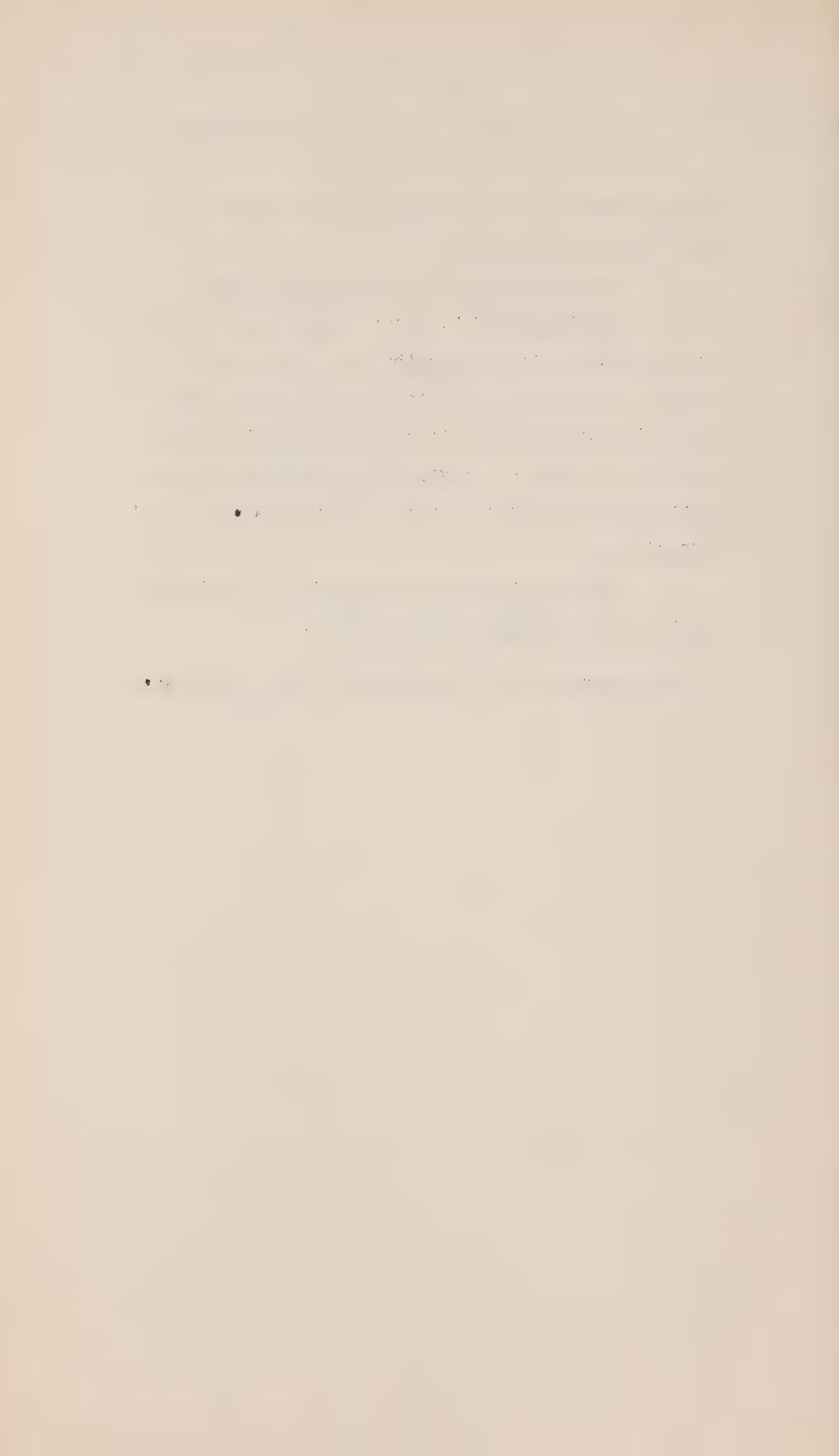
enlightenment. Still I wish to repeat that we appreciate it very much.

PROFESSOR MUND: Thank you very much.

THE CHAIRMAN: Then, I might add before we conclude this hearing that there will be a series of hearings in Ottawa commencing September 13. Any who may wish to make presentations there are free to do so, or may make supplementary presentations if they have already appeared before this Commission.

The hearing will now adjourn. This will conclude the hearings in Vancouver.

--- Adjournment; to be resumed at Ottawa, September 13.



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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 20

OTTAWA

SEP 13 1954

RESTRICTIVE TRADE PRACTICES COMMISSION.

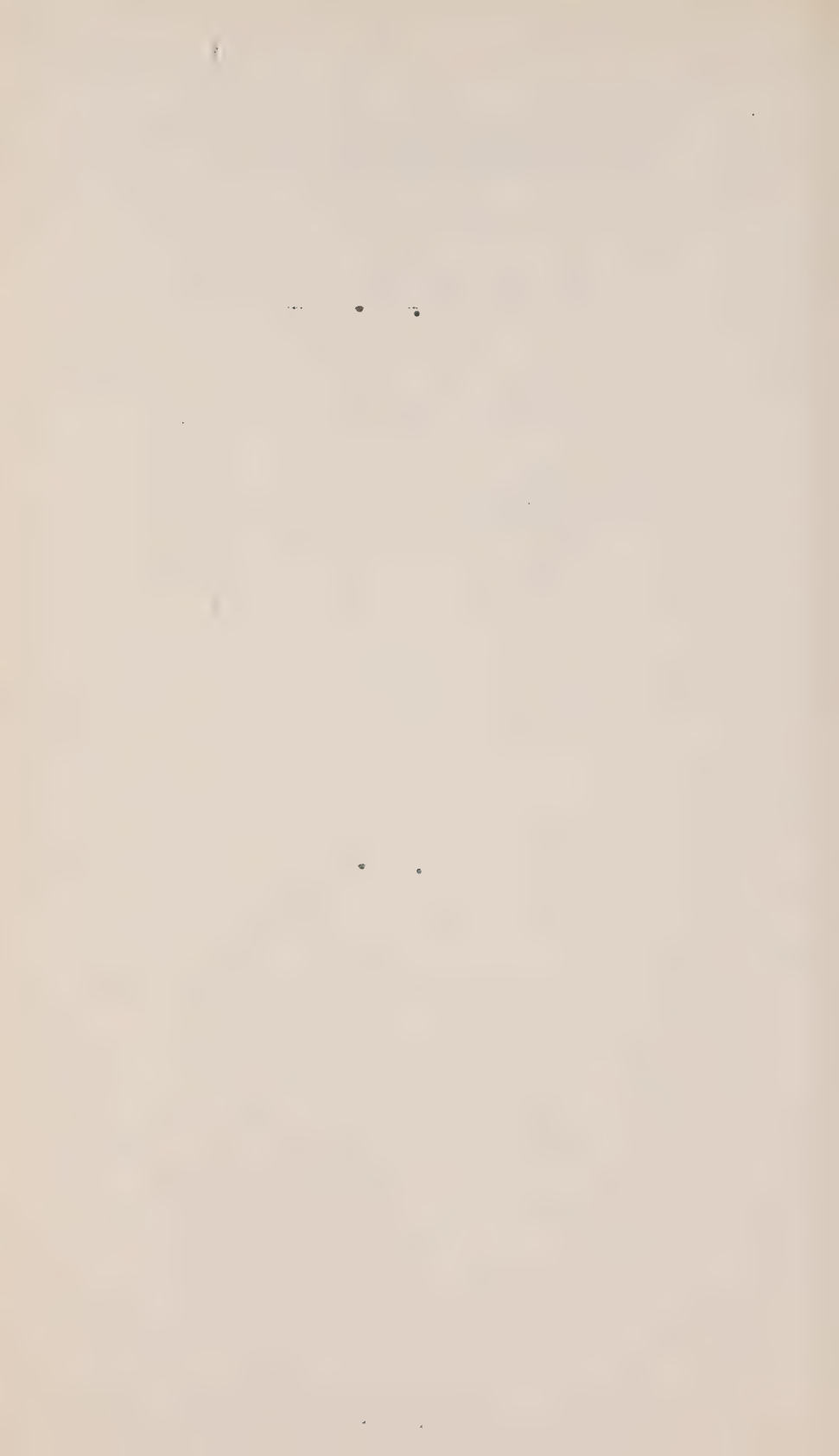
IN THE MATTER OF
an inquiry
Regarding Loss Leader Selling.

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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss Leader Selling

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Hearing held (in public) in the Supreme
Court Building, Ottawa, Monday, September 13th, 1954.

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PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman
Guy Favreau, Q.C., B.A., LL.B.,	Member
A. S. Whiteley, B.A., M.A.,	Member

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APPEARANCES:

Mr. N. W. Wickwire, Q.C.,	}	Counsel to the Commission
Mr. Paul Gerin-Lajoie		
Mr. R. M. Davidson,		Secretary to the Commission
Mr. L. A. Skeoch,		Senior Economic Adviser to the Director of Investiga- tion and Research.

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REPRESENTATIONS:

Dean Ewald T. Grether;
of the University of California.

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THE CHAIRMAN: I might say for the benefit of any who have not been present that these are the final sittings in connection with the loss leader inquiry which was begun by this Commission last spring. Sittings have been held previously in Ottawa, fairly extensive sittings in Toronto and Montreal and, subsequently, sittings were held in Saskatoon, Edmonton, Victoria and Vancouver, these being all the centers from which there was sufficient indication of interest on the part of persons who might desire to appear or to present briefs, to warrant the holding of separate hearings.

We have now come to the final stage at which any persons or organizations which have not yet been heard, but which desire to be heard, may be heard. Then, those who appeared before us previously may, if they so wish, make further representations to the Commission.

This morning we are privileged, I understand, to have with us Dean Grether of the University of California, who has very kindly and, at considerable inconvenience to himself, come from California to give us the benefit of his experience and knowledge on this subject, gained over many years of practical as well as theoretical experience in his professional work, particularly in California.

We will ask Dean Grether, first of all, if he would prefer to make a statement at the opening,

or prefer to answer questions from the beginning-- or how he would like to proceed.

Dean GRETHER: Mr. Chairman and gentlemen, I would prefer to make a statement, and then answer questions.

THE CHAIRMAN: Very well. You may sit down, or stand up, just as you choose, and make use of the lectern which is in front of you.

Dean GRETHER: Well, Mr. Chairman, supposing I use the lectern for a period, and then perhaps sit down after that.

THE CHAIRMAN: Whichever you wish. Possibly counsel might ask you a few questions at the beginning, just to establish your background.

MR. GERIN-LAJOIE: Dean Grether, would you mention for the purpose of the record your first name, please.

Dean GRETHER: My first name is Ewald, and my middle initial is T.

MR. GERIN-LAJOIE: What is your occupation?

Dean GRETHER: I am professor of economics and dean of the school of business administration of the University of California, situated at Berkeley, California.

MR. GERIN-LAJOIE: Would you care to mention, also, your qualifications, particularly on the subject of loss leadering and connected subjects.

Dean GRETHER: This has been an area of

interest for some 25 years. I have been teaching in the field of marketing and economics since 1924. In 1933, because of interest in this subject, I went to England to look into the problem of resale price maintenance there.

When I came back I found a very wonderful research laboratory had been prepared by my own state, by the passage of the 1933 amendment to our Fair Trade Law; and that led me to observe conditions in our state and, to some extent, in the country at large.

This led to a series of researches and publications.

A year ago I visited Sweden and had a chance to observe conditions there. Over the years, there has been a considerable body of writing based upon these investigations.

MR. GERIN-LAJOIE: Now, Dean Grether, you have been good enough to say that you would like to make a statement at the beginning. Perhaps you would proceed with that now; and then, afterwards, I may have some questions to put to you which might be considered helpful by the Commission.

Dean GRETHER: Mr. Chairman and members of the Commission, I have jotted down some notes from which I should like to speak informally. I might say that my occupation as a professor means that I am accustomed to interruptions from students in my classes,

so if I do not make myself clear, I hope you will feel free at any time to ask questions. This will not disturb me at all, particularly because I have not prepared a formal statement. I have merely a series of notes from which I propose to discuss some aspects of this interesting and important subject.

I have been very much interested to read this volume of yours, based upon some of your earlier investigations. I mention this because I am always looking for new evidence in this field. I do not feel competent, however, to discuss in detail the conditions in Canada. I am always impressed by the variations in conditions between countries, as well as between the jurisdictions of my own country, the 48 states of the United States.

There is an enormous variety in marketing and marketing channels which one must keep in mind. As indicated already, my interest is that of the academic research man and observer. I represent no one except myself. I stress this, because whatever I say represents my own views, and not those of my university or of any other organization with which I might be connected.

In this connection I wish to point out that currently I am a member of the attorney general's national committee to study the anti-trust laws; and nothing I say here should be taken to reflect at all the views of the members of that committee. In other

words I am speaking in the first person, entirely.

I am highly honoured to be asked to come here, and I hope no one will feel that I am trying in any way to intrude my views into your situation. Quite the contrary, I am much more interested to learn from you; and I would hope that perhaps in the process I could share some of my experiences and views with you.

In the first place I shall make some very brief observations concerning my attitude toward the regulation of trade practices in general. I should say as a background for this, if you will notice the brief answers to the questions asked me, that my first period of research began during the depression years, the years of the thirties. And then we moved from that, you see, through the wartime series of incidents, and on to the post war period. And now we go more deeply into the post war period.

My observations would indicate that these changes in general economic conditions change the nature of these problems, also, and affect attitudes. Looking back over some of my own views I found that sometimes they have moderated or adapted a bit to the changes in those economic conditions. I stress this because, in my view, it is very difficult and dangerous to enunciate universals in this area. I shall have more to say about that later.

This leads me to my first statement that

affects my own approach. I am a strong believer in what one might call the case-by-case approach to the analysis of problems in this field. That is, I think it is very important to know all the relative facts and factors. I think it is especially important to know what the economists call the structure of the market, and also to know what is the specific nature of the competitive situation in any given area, whether it be in the country or merely in a local market. Because there are wide variations that do affect any attempt to appraise the results.

Likewise, number two in my own platform, I believe there are relatively few trade practices that can and should be prohibited, per se. I do not know whether you use the per se language to the same extent we do. But we worry a great deal about per se violations.

Practices which are clearly deceptive or, if you wish, clearly predatory I think, of course, should be prohibited. But when one goes beyond that there are not very many things where one can clearly say that this should be prohibited in general; because so much depends upon the character of the competitive situation, and the directness of competition, and the behaviour of individuals, and so on, in any given situation.

I mention this because, from my point of view, I do not like to see an attempt to prohibit

something called loss leader selling in general terms. My reasons are as follows: In the first place, it is very difficult to define loss leaders in such a way as to be sure that one is dealing only with them, when one attempts to regulate this particular practice.

I have read with interest the definitions given in your earlier report. It is evident that I need not go over this ground. I have tried, myself, at various times to develop definitions of leaders and loss leaders. And so, unless you wish, I will not develop this particular aspect of the problem in detail, except to note, in the second place, that unless one employs an arbitrary concept, that a good portion of an analysis here involves a rather subtle interpretation of the intent of the user.

In other words what I am driving at is that it is very difficult time and again to segregate something called loss leader selling from normal, aggressive price competition. And part of the reason for this--and this leads me to my third point--is that in the sale of goods at retail there is a large amount of what you may call interdependence of demand. Some people might go to a store with a wide assembly of goods and buy only one thing. That happens time and again. But the convenience of having a large variety assembled under one roof leads, let us say, the shoppers or the customers almost always to buy

more than one thing.

Therefore the prime purpose of the leader or, in its most severe form, the loss leader type of selling, is to feature a given product with an intent and hope that the customer who comes to buy it will also buy something else, and that if there is a loss taken on the item it will be covered or more than covered by sales of other items.

I think it is important, in the fourth place, if one wishes to understand this problem, to make a distinction between leaders and loss leaders by something which I choose to call bait selling.

If a merchant advertises a product at a reduction below its normal price, or below some other customary level, and does not have it in stock, and does not intend to have a sufficient inventory to meet demands, that is clearly deceitful. And I think anyone might well be banned, if he did not intend to meet the demand. But if he builds up an inventory and is able to meet the demand, that is a quite different situation.

As all of you know, it is customary often to define leaders, therefore, arbitrarily; and I suppose the most widely employed definition is the one that takes the laid down cost of the merchandise to a given dealer as a base, and to sell as a loss leader represents selling below this net acquisition cost. That is an arbitrary definition

and it raises, of course, the question: Why not push those costs deeper into the store and add something to these net acquisition costs which we might call direct costs attachable to a given item, or why not even raise the average cost of operation? The latter, clearly, is most difficult; because that suggests that any item should carry average costs -- and, obviously, that would not be true, and should not be true. Because there are marked variations in costs of handling and selling.

I should like also briefly to make some brief--I hope--observations with respect to my position concerning resale price maintenance. When I first began my research in this field, I might say that I took a view which was somewhat unusual. Most academic economists have all had very little difficulty in this area. So far as most of them are concerned, this practice is one that they feel should be prohibited, because it runs counter, so far as they can observe, rather readily, to the tenets of relatively simple and effective competition.

When I began my research I did not start with that assumption. This was an interesting area of investigation. I wanted to see how it was operating, first of all in the States -- in my own state, in particular and in the United States in general. I might add, therefore, that during the earlier period of my research and writing and reporting in this

field some people were rather unhappy, among the academic economists, because they were not always sure as to what my own view was.

And the reason is that during that earlier period I was trying chiefly to explain and to observe.

More recently I have therefore made an effort to indicate and to explain my position -- because I do, in fact, have one. And I wish to make it clear here, so that there may be no misunderstanding about it.

So far as I am concerned, I do not favour resale price maintenance, after having observed this for some 25 years. In making this statement I wish to point out that there are important problems arising in the channels of marketing. There are certainly important conflicts in those channels. In so far as there are issues and problems that might require regulating attention, it does not seem to me that resale price maintenance is a reasonable approach to the solution of these problems.

Why? Well, resale price maintenance represents a permissive procedure employed by manufacturers in the marketing and sale of their own trade-marked goods. Whether resale price maintenance will be invoked, therefore, depends in the first place entirely upon the interests of the manufacturer -- and I say "in the first place." In some fields it is not practised, and in other fields it is. It has

a relatively haphazard and unselective type of application. There is no necessary relationship at all between the needs of the field in terms of important problems and the extent of application, or the character of that application.

For instance, certainly I suppose one of the most intense fields of competition, where there is more stress and strain than in other fields is the grocery field. Resale price maintenance I am sure has almost no application there; whereas it is invoked very heavily in the drug field, and a few other fields.

So this permissive and unselective method does not, in itself, it seems to me, guarantee that there would be a reasonable approach to the problems of trade regulation.

In the second place I always keep in mind that it is a system of private price regulation. Under it a manufacturer is able to step into the marketing channel and establish the price structure and price relationship, either in a full sense or in the sense of minimum prices. And this is a scheme of private price regulation without the supervision of public bodies.

In the third place -- and this I think is very important, indeed -- the character and extent of use depends very greatly upon whether or not there may be group or collective administration of resale price maintenance.

For instance, in Great Britain there is much more application than there is in the United States. In Sweden I was told that probably 30 per cent of the consumer goods were sold on this basis prior to the prohibition a year ago. In the United States a relatively insignificant percentage of goods is sold on this basis, in spite of the broad rights existing there. The difference primarily is that in the United States there is the Sherman Act, with its prohibition of group activity. In other words, group enforcement is unlawful in the United States, in the open sense.

But resale price maintenance, in the environment of cartels or of collective administration, takes on a quite different form than resale price maintenance where a collective administration is unlawful.

I was interested, in reading a most recent British report, to notice that there is a strong feeling there that collective administration should be prohibited; because they have an awareness of this aspect of the problem.

Now, that leads to another consideration. Resale price maintenance is apt to be invoked most heavily in fields where there is a strong, if you wish, consciousness of mind, or at least a strong ability to behave as a unit. In the drug trade in the United States there is this particular attitude and ability. The majority of the volume of drug

products, -- the larger proportion of them -- go to market under conditions where they prefer this type of regulation. That affects the attitude of manufacturers in making decisions as to whether to enter this type of program, and affects the costs and the difficulties of enforcement also.

In looking at resale price maintenance I should like briefly, again, to consider what one might call some of the long-run consequences or repercussions of this practice, when it becomes generalized and used widely. It is my observation over the years that members of a given industry or trade are almost always more concerned with the immediate short-run situation and results than with what might happen ten or fifteen or twenty years hence, based upon, let us say, a given adjustment in circumstances of their industry or trade. That is quite reasonable; because, after all, if you do not survive today you will not be here tomorrow. So it is quite understandable why the short-term view tends to be taken in any given situation.

But I think it is my responsibility, as an academic observer, to look ahead and to try perhaps to analyse what may happen either theoretically or in terms of what one can observe in countries where this practice is longer established and used more widely than it has been in the United States. So, if I may, I should like to generalize, just a bit -- and, please realize, though, that there is evidence

to support these generalizations.

In fields in which manufacturers' brands have relatively general distribution -- in other words, must carry well known brands, because they are in general demand -- if resale price maintenance is invoked, and if in the process of invoking it the margin given a dealer is somewhat nearer to his average operating costs, or perhaps even a little higher, depending upon the circumstances, then these particular fields obviously become attractive. That is, this looks like a sure way in which to make a living, because of the protection given to the dealer. Therefore, there will be a tendency for individuals and for capital to flow into these fields. In other words, the number of dealers and the number and variety of facilities will tend to increase, assuming always that there is free entry into the business. And in most retailing there is free entry -- although, occasionally, there are arbitrary operators such as one sees in the beverages field, and the drug field, based upon licensing procedures.

Now, as the number of establishments increases, obviously the volume per establishment will tend to decrease. Likewise, because it is no longer possible openly to feature prices as a means of getting business on the control items there will be a tendency to pay more attention to the service aspects of merchandising; and this will tend to increase service

costs. But since this is happening -- volume going off and costs going up -- there will be some dealers who will try to resolve their problem by price cutting of a surreptitious or a secret nature. And the small dealer, especially, will be able to employ this practice on an informal basis with his regular customers. And the practice may become common practice in the industry.

Now, we are faced with this kind of situation: The manufacturers may be expected to find themselves under pressure to expand their margins, because the margins they started with are no longer adequate under these conditions of decreasing volume and of higher costs.

Now, this puts the manufacturers in a difficult position, because any given manufacturers would have before them the problem of whether they could expand these margins out of their own profits, or whether they should expand them by raising prices to the consumers. And just what competition would dictate becomes one of the difficult variables manufacturers would have to face up to in this particular situation.

Now, there is one solution to this problem; and this is what I have sometimes called the ultimate rationale of generalized resale price maintenance. The one solution is limiting the number of dealers under a scheme of licensing. The scheme could be a

private scheme, administered by a trade or industry, as has been true to some extent in Great Britain; or it could be a scheme of governmental or public licensing. And if the numbers are kept down under the price umbrella, then, this is a workable scheme of operation, protecting dealers, giving them franchise rights that are valuable property rights, and no doubt would be subject to sale in the market when a dealer went out of business, if he could guarantee the delivery of this type of protection. Another type of pressure arises also, I should point out, and that is the desire sometimes for governmental intervention -- trying to pass the burden of enforcement over to governmental agencies; because enforcing prices over numerous dealers in widely found markets, is a very expensive business. Sometimes I think we tend to forget that this is price fixing and price control in peace time conditions without the benefit of the factors of patriotism and loyalty; and therefore there is a certain tendency to ask the government to intervene. That has been true in the United States, to some extent.

The alternative to governmental intervention would be collective administration, where members of an industry or trade would be allowed to get together as a group, -- as has been true in Great Britain. And collective administration is **much more** economical than administration by individuals.

The ultimate rationale as I have described it here, exists in my state of California already in the alcoholic beverages trade. Please do not misunderstand me; I am not suggesting that in all trades what happens here would occur, because this is a peculiar situation. What one does regularly in the sale of alcoholic beverages need not happen in the sale of other products. But this does, in a sense, show what I would call to be the ultimate rationale. In the first place, manufacturers are required to post resale prices -- the distillers. In the second place, all the dealers are licensed by the state. In the third place the number of licensees has been kept down to the pre-war level, in spite of the great increase in population. In the fourth place licence rights enforced by the state licensee -- in this case the Board of Equalization -- give very strong control over the dealers. And this state agency, therefore, is in a very strong position to enforce price structures on the manufacturers or distillers as enunciated by them, on a compulsory basis.

Incidentally, therefore, of course these licence rights are valuable property rights, and can be sold for rather sizeable amounts by one dealer to another dealer.

One further observation of a general nature. I am of the belief that one of the most important aspects of trying to analyse this field,

according to my observation, is the endeavour to unravel in a reasonable sense the mysterious behaviour by manufacturers in this field. The Federal Trade Commission made a tremendous effort to get evidence, and found it very difficult. If there is anyone in this room who has read some of my work he will know that I have made several attempts at various times to try to get a basis for analysing the attitudes and the interests of the manufacturers. By that I mean, what would influence a manufacturer to set up a system of resale prices, and what would be the problem he would have to analyse, the burdens he would have to carry -- and what would lead him to reach a decision one way or another?

It is my observation that most manufacturers, except in those trades where there is strong unanimity or cautiousness of mind among the dealers, find it very difficult to reach a conclusion on this matter. Because the problem has so many aspects, and there are so many possible competitive threats to their position -- let alone the expense of enforcement. And this latter element cannot be overstressed, especially in the United States market when one visualizes the problem of trying to enforce price structure nationally in 45 jurisdictions. If a manufacturer makes a mistake, his competitor may be able to capitalize on his mistake, no matter whether it is in one direction or another. This is a very

complicated problem for a manufacturer, on which to do an analysis, to be sure of his position. And if he decides, yes, then he realizes that he is undertaking a very sizeable job, in terms of the allocation of resources to enforcement.

Now, so much for that. I shall be glad to develop this subject further, if you wish, during the period of questioning.

In the next place I should like to make a few brief observations concerning the use of leaders and loss leaders. I have chosen a few of what one might call general types of statement that arise. They have arisen in my country, Great Britain and Sweden, and I am sure they probably arise here -- established statements, both pro and con. And it seems to me I might be helpful by looking at a few of these generalizations which do arise in this field.

First, it is argued that the use of leaders and loss leaders has a depressing effect upon the prices of primary producers. I might say that this argument was used very effectively in the depression period and was, to some extent, the base of the whole NRA program in the United States. It was felt that one might be able to resolve some of this problem of depressed markets by arbitrarily raising prices, and by applying force to the markets.

So far as leaders and loss leaders are

concerned, it seems to me this is an example of relatively naive and unsophisticated reasoning. If a loss leader is a true loss leader, then by definition the dealer is subsidizing the practice himself. In other words, he has voluntarily reduced his marketing rate below his normal marketing rate, or some other figure which he might have used otherwise. And he himself, therefore, for purposes of selling other products, has decided to take this particular reduction.

He therefore, in a sense is subsidizing the sale of his product. And the reduction in price, other things being equal, should increase the sale of the product, with given demand conditions existing in the market.

There is no particular reason, you see, why this should work back to the disadvantage of the primary producer. On the contrary it should benefit the primary producer, because it will tend to increase the sale of his product.

There is one exception. The exception would be in those markets where a large number of dealers, in retaliation, could boycott the sale of this particular product. And, if that happened, you would have a problem, again, of collective action. But, assuming ^{individual} and spontaneous action or forces, it seems to me one cannot make a case for the proposition that loss leader practice would work backwards through marketing channels to the detriment of the primary producers.

On the contrary you may recall that some of our large distributors have been praised tremendously for trying to bring a solution of the problem of excess farm products by featuring them in their stores. It might be very difficult to dissociate this type of praiseworthy practice from the use of something called loss leaders.

In the second place, it is sometimes argued that the use of loss leaders is a type of deceptive practice which confuses consumers; that it is intended to make consumers believe that all the other items in the dealer's assembly are sold at equally low marketing rates. I think all must agree that this element is likely to be present to a greater or lesser extent. Certainly I cannot stand here and attempt to interpret to you the behaviour of all the housewives in the United States, or tell you to what extent they are rational or relatively ignorant as they approach their buying. I think we are all agreed, though, that housewives are quite accustomed to buying specials. They tend to watch advertising; and my surmise is that a large proportion of them -- perhaps the great majority of them -- understand this as a tactic, and that they will watch values between competing enterprises, and do considerable shopping; and I would think that they become very shrewd in judging prices and values as between different stores -- although it is true that there may be a certain

element of confusion in their minds, in individual situations. My final reaction is that the confusion here would not be as great as the harm to them if price cutting could not be employed widely and competitively in the distributive trades.

In the third place, it is sometimes argued that the use of loss leaders is a practice that can be employed best by the larger organizations; and that, as a consequence of this application, a quasi-monopoly position or even a monopoly position, may be created in retailing trade marketing channels; and that therefore it would be an excellent idea to prohibit the practice in order to protect the consumer and the public against the building of these quasi-monopoly positions.

Now, please recall again my general position, that it is very difficult, except arbitrarily, to dissociate or to segregate the use of leaders from price competition and promotion of merchandise in general.

In the second place, at least in the United States -- and I assume it is true here in Canada also -- retailing is one of the most competitive parts of the economy. In fact, it is probably just about the most competitive segment of the economy. It is very difficult, if not impossible, to obtain and to hold a monopoly position in a given retail market. It is so easy for new entrants to come in, that anything

that tends to look like a monopoly position becomes **threatened** immediately by new competition.

Then, in addition, competitors always have other alternatives available to them. Many of us who have observed marketing over a period of years I think will have been impressed by the ability of the marketing system to express itself in a different way as conditions have changed. There is enormous vitality and energy stored up in the free enterprise system, as it expresses itself in the handling of goods and services in our markets. Over the years this monopoly cry has been used almost always whenever a new enterprise became important. No doubt some of you have read of the cry at the end of the last century, and early this century when it was used against the department stores -- arguing that they would soon have a monopoly of retailing in our market. Department stores have never achieved such monopoly.

Then, it has been used against chain stores. It is used against super markets, to some extent. In some foreign countries it is used against consumer cooperatives.

In other words, any new competitor who shows signs of vitality and strength becomes attacked as a threat to competitive marketing -- a danger, because it is called a quasi-monopoly situation.

In terms, at least, of my observation, I

do not see any strong threat, in terms of quasi-monopoly potentials in the use of leaders and loss leaders in our markets.

Then, in the next place, it is often argued that the use of leaders and loss leaders tends to ruin the reputation of established brands in the markets. Again it must be admitted that there may be something to this, in individual situations. After all, who am I to stand here and try to tell you exactly what happens to hundreds of thousands of products as sold in marketing channels. Yet, over the years I have tried carefully to get evidence on this particular matter. So has the Federal Trade Commission in the United States; and I assume that no doubt you people are trying to get the same evidence.

It is very difficult to establish the facts-- in other words, to build up a very large body of evidence concerning this particular issue. My own view is that very likely this argument does not have very much basis, in fact. It is the best-known, well-established products that make the best leaders, and the reduction of the price of those products is not very likely to be assumed by consumers to reflect a cheapening of the qualities of those products -- at least that is my view. There may perhaps be an element here with respect to new manufacturers; but in any individual situation,

that becomes a matter of fact, in each case.

Then, likewise, it is often argued that the character of competition and of costs in retailing does not provide the base for price differences among sellers. In other words, to put it differently, that margins tend to be small in retailing, and that there is not the basis, therefore for significant price differences among vendors, and that therefore, for instance, resale price maintenance or other types of regulation could not really make very much difference.

Now, as a matter of fact this is not true. There are enormous differences in margins in retailing. In a large metropolitan market there is truly a spectrum of costs and prices between the full service dealers, serving highly exclusive and selective markets on a service basis, and the limited service cash-and-carry dealers.

Perhaps the best way to visualize this is to take the super market, which may be operating on 10, 15 or 16 per cent, and contrast their costs with those of department stores serving upper and middle markets, with costs running to 35 or 40 per cent -- and in each case I use figures based upon selling prices, not upon the cost of merchandising.

In almost any complicated metropolitan market there is a wide range of variation in cost. I could for instance, I am sure, take you to a typical American city and show you two department

stores, one of which would have full service, with a fine building, wide aisles, elaborate fittings, abundant sales staff and service, first class selling service, credit, delivery service. And right across the street may be another store with a much inferior building, with crowded aisles, with a very small amount of service, where the customers have to fight to get the merchandise -- no delivery -- no credit. And the costs are bound to be different. They may be almost half in one case as opposed to the other.

My point is that there are differences in the costs of selling. For instance, in the retail drug stores the dealers say they must have 33-1/3 per cent in order to operate a typical drug store. In a supermarket, selling staple products, the costs are obviously very much lower. That would be so in any food outlet selling relatively staple products, where they get volume.

Then, it is sometimes argued also that price competition under resale price maintenance can be just as vigorous as without. I added this point after my previous point because clearly they go together. If there are not variations in margins, then obviously it might not make very much difference, except in individual situations.

But one of the chief reasons, I think, for opposing resale price maintenance in terms of general application is that it requires all dealers, regardless

of their costs, and the type of operation -- clientele, the number of services, and so on -- to sell either at the same price, or at least not to sell below the minimum price. And this, therefore, tends to freeze to a considerable extent competitive adjustments in retail markets among various types of enterprises. And in fact, in reply to this particular point of view, it is intended to do so. Why should there be such insistence upon this type of regulation, unless it was intended to inhibit price competition among sellers in that field?

Then, likewise, in terms of some of the types of arguments I have seen advanced in general, the question is often raised: What would be the effect of prohibition which would merely, in the case of loss leader selling, prohibit sales below net acquisition costs? That is, would this have very much influence on the market?

Now, except under conditions of wide and deep depression, when markets are full of depressed merchandise, such as under the conditions which existed in 1933, when very little could be moved under any type of endeavour, there is not very much merchandise sold below net acquisition costs. In other words, usually this is a type of practice that involves a very very insignificant amount of merchandise.

In other words, a type of prohibition of this sort would not make very much difference in a

normal market. This raises the question, by the way, of this type of approach -- and perhaps we might dwell for a moment or two upon it. In the United States there has been some endeavour among the States to set floors under competition in our markets. Sometimes those floors are based upon costs, and sometimes they are arbitrary floors. Sometimes they are 2 per cent of wholesale and 6 per cent of retail. In other cases they have gone to higher levels. And these have been intended to be approaches to this particular problem of coping with loss leaders, in terms of some arbitrary definition.

Now, these floors, when they are low, at acquisition cost, or a very small figure above acquisition cost, do not make much difference -- and if you wish I can discuss this in a little greater detail -- provided those floors are kept low enough. But once this type of approach is ended, there is a tendency to try to push those floors up from 6 to 8 to 10, in order to give greater protection to the dealers in the markets. Because on the very low mark-up basis they do not really make very much difference.

Finally I have one general observation, and then I shall be glad to entertain such questions as you may wish to ask. I mentioned earlier that the field of marketing, especially the field of retailing

is a highly competitive field. At least, in my experience in the United States, I have found that to be so. But, by the way, it is not always so in some other countries. In European countries there is much more restraint in sales innovations than there has been in this field in the United States. One is impressed by the ability of dealers, competitors, in using alternatives and introducing new methods and new devices, new products and the like. There is an enormous active and latent reservoir of innovations in marketing in our markets. I think a very important issue for all of us, always, to keep in mind when trying to analyse what is reasonable behaviour from the standpoint of regulating, is to keep before us the question: Do we or do we not really want a free competitive enterprise system? This is one section of the economy that, in the main, is highly competitive, and where it is easy to get into business -- and sometimes it is easy to get out, also, especially when the going gets rough. But it is an area of free, aggressive enterprise, on the whole. That is the reason why there is always so much endeavour in trying to do something to regulate competition. Whenever competition works effectively and vigorously there will be tries for some assistance in restraining that effective and aggressive expression of competition.

One of the reasons I have come to take such a

strong position against resale price maintenance, in my own thinking, is that to me it is one of the portents of the willingness to accept a form of regulation of this free, active, innovative enterprise system. In this case it is a system of private price regulation which, if its ultimate rationale is carried out, leads eventually to a form of interference and restrictionism.

My own feeling is that all of us, as members of the public, as consumers and also in general terms, have much more to gain by keeping this sector as free as possible, and as open and as honest as possible in terms of competitive expression; because on this basis we will tend to place the adjustments in our whole system of production and distribution on a relatively spontaneous basis of adjustment to supply and demand forces in our markets, in contrast to passing that responsibility and obligation over to systems of either private or public regulation.

In other words, so far as I am concerned, I should like to see misrepresentation, deceit or any other form of predatory practice prohibited and curbed. I prefer to see these types of behaviour observed by experts who can decide to what extent they have these particular qualities. And then I should like to see a competition relatively free and spontaneous, with entry likewise relatively free into the trades, on the ground that this is the essence of

the enterprise system, which all of us I think are trying to preserve and to optimize in our economy.

I thank you, gentlemen, for allowing me to be heard. I shall be pleased now to entertain such questions as you may wish to ask.

THE CHAIRMAN: Well, professor, as you have been speaking steadily, perhaps we might have an intermission at this time.

--- Recess.

--- Upon resuming

THE CHAIRMAN: Are you ready to proceed, Mr. Gerin-Lajoie?

MR. GERIN-LAJOIE: Dean Grether, you have kindly consented to answer a few questions. First of all, you mentioned that the high cost of enforcement of resale price maintenance by manufacturers is a very real item. Do you think that this factor tends to strengthen the position of large firms in competition with small firms under a regime of resale price maintenance?

Dean GRETHER: Over similar areas, -- in other words, a large manufacturer operating in the same area as a small manufacturer -- he would be in a stronger position. He has better resources, better counsel available, at his disposal, and he probably has a wide background of experience, and so on.

The real problem of the food manufacturer in the national market is the extraordinary difficulty of trying to enforce a system under the diversifications of the national market. The small manufacturer, who tried to go into the national market, would have an almost hopeless problem, although he had very large resources. The alternative between the large and the small manufacturer is more apt to be competition in regional or local markets, rather than in the national market. Certainly they would not be on the same basis in the national market, because it takes sizeable resources and attempts to try to enforce price structure in the national market.

MR. GERIN-LAJOIE: Now, another point which seems to have been covered to some extent -- but you may be able to expand somewhat upon it. Representations have been made to this Commission, up to now that loss leader selling results in pressure upon manufacturers by wholesalers and dealers for lower buying prices, which ultimately are reflected in the deterioration of products. Do you think there is any real danger of such a situation, in your experience?

Dean GRETHER: In the first place, in this kind of situation, I think one always raises the question as to why the distributor waited for the use of this practice to ask for that. They always, presumably, try to get the best buy, the

best buying prices in the market.

But, presumably, under pressure of severe competition they might look to a manufacturer for relief. And it is true, of course, that sometimes manufacturers and wholesalers, both, do try to assist distributors, retailers, in putting on specials.

They look around for perhaps a good collection of merchandise that they can use for purposes of specials. I think it is not impossible that, in a given situation under a play of pressure, that a manufacturer sometimes might have been forced to face up to this question, whether he might be forced to deteriorate the quality of his product to meet a given pressure in the market. But my guess is that it is highly exceptional, and that most manufacturers would resist this type of pressure.

Please remember that this type of pressure comes from the individual market -- not from the total market at any given time. It arises here and there, depending upon the play of local competitive factors.

I would not think that a manufacturer, in reaction to pressure arising from a given local market, would really be forced to deteriorate prices for that purpose, particularly national brands, which are the ones likely to be used as leaders. He wants to maintain their position and their reputation in the market.

It gets a little bit complicated because, as you know, in retailing in some fields, there is the habit of price lines. And sometimes those price lines are maintained and adjusted to keep the price lines. This is a habit, let us say, of adjustment.

Likewise to an extent, in connection with behaviours in retail and wholesale markets, one must realize that almost always there are other routes to market, to other brands of the same manufacturer, and private brands. These become ways of adjustment to meet competition, also.

MR. GERIN-LAJOIE: Of the same manufacturer?

Dean GRETHER: Yes, of the same manufacturer.

.14 MR. GERIN-LAJOIE: Another point raised at times before this Commission is to the effect that the worst features of deep price cutting would be mitigated if the reductions were made through excessive trade-in allowances, where this is possible, rather than advertised price cuts. From the viewpoint of the public interest, do you see any difference between the two types of competition, or price competition?

Dean GRETHER: This is, I should say, indeed a most interesting question, and one concerning which one could make a quite extensive talk. One of the most difficult areas from the standpoint of enforcing price structure, is the area where there are second-hand products which must be handled,

either on the trade-in basis, or on some other basis. And in some of those areas one cannot cut the price of the initial new item without reference to the price placed upon the trade-in item, as the bargain is worked out between the consumer-buyer and the dealer.

I could talk a long time about efforts which have been made in various circumstances to try to do something about that problem. However, I shall not do that at this time, unless you wish.

It is an old problem. The facts of life are, in fields like the automobile field, and the field of rather durable appliances, that the publically announced prices to some extent are fictitious. The publically announced price is not the price at which the consumer buys. The actual price has to consider the value placed upon the trade-in item. For, if there is no trade-in item, and business is slow, there may be a cash reduction from the announced price. One could give many examples of that.

Now, your question is, which form of price competition is preferable from the public's point of view.

MR. GERIN-LAJOIE: Or do you see any reason why one form should be permitted and one should not?

Dean GRETHER: My feeling, my view, is different from the intent, perhaps, of your question. And that is that this, I think, is something inherent in dealing with a second-hand commodity. That is, there

is the problem of establishing the value of the trade-in, which can then be disposed of on the second-hand market, the used market, or as junk.

It is almost always an aspect of the bargaining situation; and in these areas manufacturers not infrequently wink at this whole situation. That is, they assume that this higgling area is handled by the dealer. That is where he can adjust prices at a given amount, based upon the inventory situation, and the trade and the market, and that the dealer is the flexible medium for adjustment under these conditions.

Now, the manufacturer would find it difficult indeed to try to freeze and hold that situation so that dealers would not be operating in a flexible position in getting and holding business.

So my point is that this is almost imperative in the very nature of buying and selling in this field. Whether it would be preferable to have buying and selling of it at a publically announced and advertised price, without reference to the higgling factor, therefore seems to me for the most part not to be in issue. Because this is inherent in the nature of the transaction; and the values placed upon these trade-in items varies with the state of the market, and the degree of emergency upon the dealer to dispose of his excessive inventory-- and what not.

And, perhaps this is in the minds of some

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is a summary of the work done by the various departments and a statement of the results achieved. It is a general statement of the work done by the various departments and a statement of the results achieved.

2. The second part of the report deals with the work done by the various departments during the year. It is a detailed statement of the work done by the various departments and a statement of the results achieved. It is a detailed statement of the work done by the various departments and a statement of the results achieved.

3. The third part of the report deals with the work done by the various departments during the year. It is a detailed statement of the work done by the various departments and a statement of the results achieved. It is a detailed statement of the work done by the various departments and a statement of the results achieved.

people, that it is preferable to have competition out in the open, so that prices are publically announced, rather than have this secret, variable bargaining element; or, --

MR. GERIN-LAJOIE: Or at least make it possible so that a dealer might do as he wishes, and not be compelled to give a phoney trade-in allowance, as he is obliged to do under retail price maintenance. Under another regime -- well, the dealer would be free to choose whatever way he wished to give a reduction or a rebate.

Dean GRETHER: My impression is that no matter what words one uses, even under resale price maintenance this is present. That is, this is a secret and individual higgling area, and dealers do tend to adjust themselves to competition here. And they are always making those adjustments, even on fair-trade items.

THE CHAIRMAN: Dean Grether, I think perhaps what Mr. Gerin-Lajoie has in mind approaches the matter in a somewhat different way. We were told that prior to the passing of legislation here at the end of 1951 the practice of resale price maintenance did exist in certain fields fairly extensively, and that during that period of time there was a great deal of this higgling business about which you have spoken, purely fictitious trade-in values being given; but since the legislation was passed the direct price

cut or the discount has become the practice, and that certain of the groups who have made representation to us felt that the new development was much more reprehensible than the old one. It was pointed out that the manufacturers did not object, or do not object so much to this higgling business which preceded the change in law, but that they do object to the wide-spread advertising of reduced prices. I think Mr. Gerin-Lajoie was hoping to get your views on the question of whether, from the standpoint of the public, there is any real difference between getting a cut by means of fictitious turn-in value and getting a direct cut announced in advertising.

Dean GRETHER: I see your point. The thing I was arguing was that, regardless of the situation, there is going to be higgling. In the sale of fair-trade items, where you have prices announced, you have higgling going on surreptitiously. The dealer, after all, wishes to get the business. Whereas competitors on non-fair-trade items do cut prices publically when advertising them, because there is no control.

The problem of the fair-trade dealer then, is to get the business, still. And he still will adjust matters, not infrequently, to the needs of the situation. So that if he is a small dealer, after all if it is an individual transaction it is difficult to control, under the terms of that situation.

From the standpoint of the manufacturer, I see your point. The public advertising of lower prices does put him under greater price pressure than having these adjustments made individually and more or less secretly to meet the market. Undoubtedly I think that is true, and I can see why some manufacturers might wish to have the burden of price reduction carried locally and individually rather than to have it announced publically, as a general reduction.

THE CHAIRMAN: From the point of view of the public, they get the reduction by one means or the other -- that is, from the standpoint of the consumer?

Dean GRETHER: When one talks about public announcements one must be careful because there may be some considerable restraint in making those public announcements, so far as the manufacturer is concerned. That is, there may be retaliation by competitors. It may be preferable to have these adjustments made flexible down the dealer channel, rather than at the top, when there are only a small number of competitors in the market; because they must start from something fairly near the same level, if their products are in keen competition.

MR. GERIN-LAJOIE: If you feel that price competition is essential, to a great extent, to our free economy, would you go so far as to say that it is preferable in the public interest that price competition be permitted openly, and that such

competition would be more effective than just competition with trade-in allowances, and so on?

Dean GRETHER: One likes certain price competition. One must not, however, be confused, say, here, by something that looks very fine, theoretically, on paper.

I do not know whether you recall the open price announcement of a few years ago. It was argued that open pricing was the way to make competition effective, in a price way. But quite frequently a considerable amount of price competition is on this higgling basis, and it is inherent, in the very nature of the sale of high-priced specialty items, especially when there are trade-in items.

Now, I think it is very likely too that if a major manufacturer announced a reduction, competitors must announce reductions, also. So you have got active open price competition in that case. It will not go on indefinitely. There will come a point where that will not continue. The flexible element is in the bargaining and marketing channel, in the very nature of this type of situation.

A lot depends on what I called earlier the structure of the market. By that I meant the number of sellers on the market, and the relative character of the products they make, in terms of their buying and use; and a lot depends on the policies of the firms themselves. They vary considerably among

different firms in different markets.

But I think, myself, it is dangerous to assume that open price announcements would, in themselves, necessarily produce active, aggressive price competition of all levels, because you have them at, say, one level.

One never knows the difficulties of restraint that may be almost implicit in any given situation, because of the dangers of starting a major price war among competitors. Therefore, very often there is a certain amount of higgling and price variation going on, of a flexible sort, in the market.

MR. GERIN-LAJOIE: What do you mean by that, that open price competition is one element, or not even that?

Dean GRETHER: Oh yes. You have, let us say, a manufacturer announcing prices, on the open. But, as I said earlier, those are not necessarily the prices that consumers are buying at in a given market. Therefore you must consider all kinds of variations in the trade, the degree of service, and so on, and other elements which may arise in bargaining on the market.

MR. GERIN-LAJOIE: Now, Dean Grether, I understand that you have studied the situation in this respect in other countries such as Sweden and England. Would you be able to say if resale price maintenance has about the same effect in all countries

where they have it, or if it almost invariably varies according to different circumstances -- let us say attitudes in the trade, or also the number of manufacturers in certain fields, and so on?

Dean GRETHER: In my earlier comments you will recall that I emphasized the importance of looking for what I called the relevant facts and factors in any given situation. I had in mind there not only between markets in a given country, but as between countries.

Take Sweden, for instance. Here you have a country with a land mass the same as my own state of California, with a population relatively staple at seven million people and, in contrast a very dynamic population system. Growth is characteristic of our economy. And, by the way, I do not intend to make a speech about California -- at this point, anyway. I just wish to stress the situation.

The environment in Sweden is one of a small and homogeneous country where there tends to be much more conservatism than where there is competition between buyers and sellers running across state boundaries such as we have in our 48 states.

Also, in Sweden cartels, or group arrangements, are not prohibited. They are registered. They can be investigated. Action may be taken in special cases. But there is no general prohibition similar to our Sherman Act in the United States.

Now, in that setting resale price maintenance is used much more effectively than it is in the United States. They have a much larger proportion of goods which would come under its control.

Now, as I mentioned, a year ago this last spring I happened to be in Sweden at the time the Riksdag had prohibited resale price maintenance. But manufacturers may still suggest resale prices. And some of the people to whom I talked felt therefore that the prohibition might not be effective, because suggested prices would still tend to be employed, because of the conservative nature of competition, in many of the trades.

I cannot give the facts on this. I have been informed by at least one Swedish economist that this fear has not been entirely borne out by the facts-- that there have been some adjustments in prices in Sweden following the prohibition. While I have not followed this up, I have heard that there has been something similar in France. In other words, there is some tendency in some other countries to take action similar to that in Canada. I might say that the debate still goes on in my own country.

MR. GERIN-LAJOLE: Are you in a position to say whether this action taken by some countries like Sweden and France in abolishing resale price maintenance reflects a desire to strengthen price competition, or reflects a concern about competition at the retail level?

Dean GRETHER: I think in the case of Sweden that is true. There is considerable concern there. I am sorry I cannot speak in relation to France; perhaps you have better information on that than I have.

By the way, there is an interesting twist to this -- at least in the literature in Great Britain, as I have been reading it, if I might digress for a moment. I have noticed in one or two cases that trade unions have spoken out in favour of resale price maintenance. They have done this on the ground that they did not wish unrestricted competition. That is to say, in other words they felt that they could get along better with some restriction. Just to what extent that represents the general attitude, I do not know -- except you know, of course, from reading the 1949 report, that resale price maintenance as collectively administered, is under suspicion in many quarters in Great Britain.

MR. GERIN-LAJOIE: Now, at the end of your main statement you insisted, it seemed that predatory practices, such as misrepresentation and deceit, and so on, should be curbed and prohibited, and you said that resale price maintenance was not, apparently, -- that is, if I understood you correctly -- the remedy for such practices. Would you have any other remedies to suggest, or do you know of any other remedies which have been applied, or which could be applied?

Dean GRETHER: In the first place, I did not intend to include misrepresentation and deceit in selling under the heading of predatory practices. I think selling that is clearly deceitful is almost always capable of being spotted, and measures should be taken to eliminate it.

Predatory practices are of a different breed; and this is one of those words I used -- and I used it because it is prevalent. It suggests a practice intended to injure or to destroy competition. And you get into a nice problem here as to whether you are speaking of an individual competitor, or competitors in general. I shall not discuss that at the moment.

In other words, it is a matter of whether a competitive device is employed that goes beyond the normal tactics of the code of retail competition, in the endeavour to get rid of some form of competition in the market. That could be labelled let us say, as a predatory practice.

The difficulty is to determine what is a predatory practice. Again you come back to my original view. One has to analyse again a given case to discover whether or not a given practice as alleged is truly a predatory practice.

Now, as to remedies. It seems to me that anything that can be done to control deceit and misrepresentation in advertising and price announcing

is good. I do not know about your situation here, in detail, but as you know in the United States the Federal Trade Commission does take action in this area. In the individual states also, there is considerable action under local laws. And then there is voluntary action under the Better Business Bureaux -- and I assume the same is true here in Canada, also.

MR. GERIN-LAJOIE: Is the action taken by the Better Business Bureaux quite extensive in that field in the United States?

Dean GRETHER: I cannot possibly generalize for the United States as a whole. I have seen merely local evidences. Some good does occur. Voluntary control is always difficult. It depends so much upon industrial discipline itself. But, so far as it can be done this way, I think it is an excellent approach to the problem.

I have strong confidence, myself, in measures to preserve competition -- in other words, the anti-trust approach. It seems to me if one can ban deceit and misrepresentation, and monopolistic tactics and combinations, as well as conspiracies, that one will go a long way toward maintaining a healthy competitive situation.

And, beyond that, -- I am going back to my original point of view -- I would wish to look at a given set of circumstances to see if there is anything

else that requires special treatment.

In other words, I believe that most of the demands for measures of this sort would not have a strong and reasonable basis if laws against misrepresentation and against monopoly and conspiracy were enforced adequately.

MR. GERIN-LAJOIE: Thank you, Dean Grether. That is all I have to ask. However, the commissioners may have some questions.

MR. WHITELEY: Dean Grether, in the earlier part of your statement you referred to some forms of advertisements which you thought were deceitful; and you mentioned one case where a dealer would advertise and either would not stock the item or would not meet the possible demand. In a number of cases you find advertisements in which a dealer may indicate the stock he has on hand of a particular product, and which he is selling at a price which could be regarded as a low price. Would you include that form of advertising?

Dean GRETHER: May I have that situation again, please?

MR. WHITELEY: I mean to say, there are some models I may be selling off, of which I have a limited stock.

Dean GRETHER: You mean that it is closing out of those models?

MR. WHITELEY: It may be a closing out -- I presume it would be, yes.

Dean GRETHER: Well, if it is a true closing out, almost all of our attempts to regulate by way of special statutes have this exception for closing out of stocks of merchandise, and it is indicated that this does not represent a loss leader tactic.

The type of thing I have in mind is this, that one department store manager gave this example. He said that one retail competitor who was an aggressive price cutter, if he could not get his merchandise in any other way, would come to his department store and buy at normal retail prices, and get a small inventory which he would advertise. All these sold out one minute after the door opened. They did not intend to service the demand, at all. For instance, this particular department store has a policy of meeting that competition. The comparative stock would be put in the competitor's store, and maybe one minute after the store opened it would be sold out; and then they would put their price up.

In other words, they met the competition, so long as it was effective competition between the two stores, which happened to be placed in neighbouring positions. Because, this particular aggressive price cutter did not intend to meet this demand that he was offering to meet.

MR. WHITELEY: What about the other situation,

where a store puts on a nine-o'clock special and runs it for only a limited period of time?

Dean GRETHER: And in those circumstances the public would know that it would only run for a limited period of time?

MR. WHITELEY: Yes.

Dean GRETHER: Well, if the public is informed as to the game, then I think it is reasonable and clear-cut practice.

THE CHAIRMAN: You do not think it is objectionable?

Dean GRETHER: For one thing it may be just to regulate traffic flow. You may get customers in at a different period of time, and equalize the flow of traffic for your store. This can be done, if you wish, by offering these sales at certain hours of the day or periods of the week when perhaps there is excess capacity in the store.

And, even when not used in that way, if it is the intention clearly, from the nature of the situation, to offer something on a basis of first-come-first-served, then that would not sound to me to be bait, in the sense that I have described bait.

MR. FAVREAU: I suppose the distinction lies between the means of deceiving and the means of attracting. Perhaps there is no difficulty so long as the customer knows why he is brought into the store.

Dean GRETHER: Yes and no; is there any deceit if a customer knows that if he gets there late there will not be any supply left? But if you announce that you are selling "X" electric razor tomorrow morning, and the supply of those razors is exhausted 30 seconds after the doors are opened, and if the customers have not been warned that they had better get there early, then to my mind that smacks of deceit. In fact, in some cases they have to be sure that the employees do not buy out the whole supply.

MR. WHITELEY: You mentioned the case of primary products, and that you did not think that the loss leader carried any disadvantages back to the sale of the crop, unless there was an active boycott by other dealers who refused to handle the particular product. In other situations -- let us say with manufactured goods, where some aggressive dealer will feature some particular product, and use it for an extensive period, as a leader, even though not selling at an actual loss, do you think there is any continuing tendency then, on the part of other dealers, to refuse to handle that particular product, and narrow the sales opportunity for the manufacturer?

Dean GRETHER: By the way, I am not using my references to the facts in each case as a means for not answering the questions being asked; because my experience is that time and again one cannot answer a question in general terms, because these

facts do vary tremendously between markets.

I discussed this, though, in this context, that the use of a leader is a local phenomenon. What is a good leader in a given market would depend on what was used in the past, and what is being used currently. It does not follow that the same item will be featured in all markets nationally at a given time -- although I assume it might happen in a given context that some particular product would appear to a lot of aggressive price competitors to be useful as a leader.

My point was that it is not very likely that the repercussions from one local market could be of a sort that you mentioned, nationally, if you are concerned here with a large and powerful manufacturer.

Now, it is true that well-known and nationally advertised brands are apt to be used rather widely -- but not to the same degree at all times in all markets. And when I say "used" I mean for leader purposes -- if it has characteristics that make it useful for this purpose.

Now, you get into an interesting problem here. If this practice is reasonably general, that means the price of the manufacturer, the selling price of the manufacturer's product, is reduced. Now, that should increase his sales. It gives him, you see, distribution without a marketing race. Sometimes it

is called a subvention.

To go back to the original point, about the only way he could be damaged in this kind of situation would be if the dealers as a group decided not to feature his merchandise, and try to sell something else.

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Undoubtedly there are cases of this sort, where, through group arrangements or some spontaneously, a manufacturer feels some backlash from disaffected dealers. But one cannot generalize on the other side, because in marketing there always are alternatives. If recourse is to fix resale prices, so one does not have this flexible adjustment between markets, then endeavours will be made to meet that through private brands, which are generally available, and through brands of other competitors. In other words, there is always here a flexible, competitive factor in the market. Whether a given manufacturer would be better off under one sort of circumstances -- let us say free pricing -- or another set of circumstances -- resale price maintenance -- becomes a matter of analysis in each situation. And the misfortune of that analysis is that what is true today may not be true a year from today or two years from today. Because any given situation immediately provokes efforts to adjust to it, or to retaliate and take advantage of a given situation.

And in the United States at least we have

not had long enough consistent experience to be sure of a lot of these things. If you wish I could develop that phase of the matter. This whole thing came along following the depression years. It was just booming when the war started and shifted the interest. Then we get to the post-war period boom, and the inflation. The interest was not there. It is only now we are getting back to a normal situation.

It is almost impossible to be sure of one's ground, factually, at a given time and in terms of what happens over a time in our experience. I do know that an interested party went to Dun and Bradstreet and asked if they would make a study of these effects, and publish the results. Dun and Bradstreet did not do this; they would not touch it, because they said it would be impossible really to set up the results in a fully measurable manner. In other words, there has to be a certain amount of theorizing here. There is bound to be a certain amount of each man's giving his own experience at a given time, and trying to interpret what would happen in the next round.

THE CHAIRMAN: Dean Grether, I just wish to have a clearer picture of your view concerning the prevalence of loss leaders. You have referred quite frequently to articles in which the price is cut as "leaders"; and you have also used the term "loss leaders". I have gathered the impression that in

your view there are a good many instances of the use of leaders, but that the use of anything which could properly be described as loss leaders is comparatively infrequent. Is that a correct interpretation of your understanding?

Dean GRETHER: This becomes a matter of definition, in part. A "leader" I would define as any item that is featured with the intent not only of selling that item, but with the intent and the hope of selling other merchandise, along with the "leader" item. Whether it is a "loss leader" becomes a very difficult matter of fact.

For instance, supposing you have had a customary marketing rate, and you cut that rate by 10 per cent, and advertise it as 10 per cent off. The purpose is to get other business by bringing customers into your store. It might be that you get enough additional business on that item alone to make good business of 10 per cent off. In other words, you would have that, if the volume picks up enough. And then you have the problem of how much additional business you got that you would not have had otherwise in the store. This gets one into the most complicated areas one can imagine. I am sure you have probed it -- and I am referring to the problem of the average marketing rates and gross margins, as opposed to particular ones.

In other words, one cannot really know

what the cost of handling a given item would be, without reference to the volume of business done; and stepping up volume always tends to reduce costs, at least up to a point.

Now, whether an item is a loss leader therefore, you see, depends upon the percentage of the reduction below normal, and what happens to the volume. Certainly if you keep on going down you get to a point where it is clearly a loss leader. And the simplest point, to be sure of one's ground, is below acquisition cost.

THE CHAIRMAN: You know that.

Dean GRETHER: Yes, we know that. We know that, on that item itself -- but not necessarily on the operation as a whole.

THE CHAIRMAN: But you do know that so far as that article is concerned, if it is sold at a price below acquisition cost then it is sold at a loss; and if the purpose is to get people into the store to buy other things, then it is a loss leader. At any price higher than that, it would be difficult to say whether it would be a loss leader or not.

Dean GRETHER: I would say this, that this does become a complicated type of analysis, because you get into the problem of direct cost, which may be very low, and which you cannot allocate against any individual item, in relation to the general cost. You cannot allocate it in an arbitrary manner to any

department or item in the dealer's assembly.

This is a very long story, and a very interesting and difficult one. Because, inevitably, in this type of analysis you get into judgment factors. Some portions of these allocations, once you get past simple direct cost, vary with judgment. Such factors are entirely arbitrary.

THE CHAIRMAN: There is one practical question I would like to get before you, and concerning which I should like to have your opinion. An article appeared in Life, which no doubt you have seen, headed Discount Houses Stir Up Five Billion Fuss. One of the statements made in that article is this:

It is estimated by the National Retail Drygoods Association that 95 per cent of all electrical appliances sold in New York now are sold at discount, and that in Los Angeles county discounters are estimated by a reporter for Retail Daily to sell 55 per cent to 70 per cent of all major appliances such as refrigerators, ranges and washers.

Now, both California and New York are fair-trade states, as I understand it?

Dean GRETHER: Yes.

THE CHAIRMAN: I was wondering if you had had any occasion to study the actual incidence of discount houses in either New York or California, and whether your opinion is that these figures might

be approximately correct.

Dean GRETHER: I have made no specific investigation recently. I have been doing other things, so I cannot give you the results of research. All I can give you is an opinion based upon superficial observation, and based upon research made in the past.

I would not be surprised if these figures are correct, under present market conditions, making allowance for the trade-in aspect we discussed earlier. In other words, there is a heavy overhang in the market. It is a soft market; and that, I should say, is one of the reasons for the prevalence of discount selling.

Then, in addition, one never knows but what there may be something of a transitional element here. One never knows but that it may be that we are striving for a more effective lower cost method of distributing these products. Discount selling has been here for a long time; the amount of it varies with the state of the market, as I said earlier; and the difficulty in generalizing is the enormous variety of what is called discount selling.

Even the so-called better stores are doing it, also. And some of the so-called fly-by-nights are no longer fly-by-nights: They have regular prices for inventories, sales forces, and so on. In other words, here, again, you have a spectrum of types of

enterprises, and they are being lumped together roughly as discount houses, sometimes.

THE CHAIRMAN: I would think that if in New York 95 per cent of appliances were sold at a discount, that quite a number of reputable merchants must also be selling at a discount, besides those which are called discount houses.

Dean GRETHER: Yes, I should think so.

THE CHAIRMAN: I do not think it would be possible otherwise to have as high a percentage as that.

Dean GRETHER: That is right.

THE CHAIRMAN: Then, with regard to the argument that the use of loss leaders or cut prices is more readily accessible to the very large organizations than to the small store have you had occasion to study the use of leaders by the large and the small organizations, and can you offer any opinion as to whether they are used successfully by small as well as by large organizations?

Dean GRETHER: This now becomes a matter of fact, not a matter of theory. The theory is simple enough -- that is, that a large operator such as a department store or a supermarket, theoretically should be able to use the leader tactic more effectively.

THE CHAIRMAN: Because he can stand the loss.

Dean GRETHER: And also because they have more items to sell and there is a greater chance of

selling something else, because more is available.

THE CHAIRMAN: There are more articles for sale, and they can stand a loss better, if there is a loss.

Dean GRETHER: Yes. So this, presumably, in theory at least is a much more effective instrument for the dealer with a wide variety of merchandise. Also in this connection I think one ought to keep in mind that the large operators, the department stores and the chains, are able to advertise to cover the whole market. Usually they advertise by radio or in the newspaper; and usually therefore they have a better chance of getting a return from their investment in such advertising. On the other hand, the small dealer in any given neighbourhood would lose too much by way of waste circulation if he bought coverage for an entire local metropolitan market.

So that this matter of advertising facilities is an important element in the use of the tactic also. Now, whether in any given situation a small dealer is as effective or is more effective in using this tactic becomes a matter of analysis, which must include the shrewdness of that dealer, and the extent to which he likes to use this tactic.

For instance, I have seen dealers on busy thoroughfares, small fellows, who have used this tactic most successfully. There would be a heavy volume going up and down this thoroughfare, and

they would cover their establishments with signs showing price cuts. They get heavy volume, partly traceable to the heavy traffic you can see moving past their establishment, people who wish to see their pricing announcements.

On the other hand, dealers in the neighbourhoods without heavy traffic are clearly in a different situation. It varies, too, with the type of commodities involved. And, by the way, it varies, too, with the type of controls.

Resale price maintenance, if it can be violated, is an excellent setting for the operation, especially if it can be violated relatively quietly, without calling down the wrath of the manufacturer upon the head of the violator.

You see, the beauty of this is that you can prove your case; the prices are known publically; they are announced. Undoubtedly you can find examples of small fellows who are able to use this tactic and become bigger operators in the process.

THE CHAIRMAN: From the evidence before us -- and I am thinking of the appliances field, electrical appliances -- it seems that the greatest complaints have not been directed against department stores or the large chain organizations, but against individual operators who are often described as large operators but who, so far as our evidence go, in many instances have not been in business a great many years, and who

have grown big apparently while they were engaged in this sort of operation. This seems to me to mean, in the appliances field, where they engage either exclusively or along with furniture, that they were not really loss leading so much as merely leading by a cut price, and getting a very large volume of business out of which they made a substantial profit. Does that sort of condition exist in the United States?

Dean GRETHER: When you mention the appliances field, I would say that it is difficult to use a loss leader tactic there, in contrast to some other fields. What would you use as a leader in the appliances field, in the major items of appliances.

THE CHAIRMAN: It has been described to us that major items are sometimes used as loss leaders. The difficulty is to understand how it would be successful, because ordinarily the housewife who would go to a store to pay \$400 or \$500 for an appliance does not usually buy \$2,000 or \$3,000 worth of something else at the same time.

Dean GRETHER: That is right.

THE CHAIRMAN: But it is alleged that the traffic appliances are used frequently, or fairly frequently, as loss leaders. I am thinking more of toasters, floor polishers and things of that kind.

Dean GRETHER: It is my observation, merely from my own area, that this is more likely to occur,

not in the appliances field, but in other stores such as drug stores, that take these small appliances and use them as leaders. That is, they would be something outside the regular line and would be used to help bring people in.

THE CHAIRMAN: It has happened that way frequently in California, has it?

Dean GRETHER: Yes, I have seen that.

THE CHAIRMAN: Then, there is a general question I should like to ask. It has been urged upon us that the manufacturer of a branded article has a vested right in the brand or the patent if it is patented, which should entitle him to fix the end price of the article, even though in the process of merchandising it the article becomes the outright property of a wholesaler or a retailer who, in turn, will desire to sell it. That is, it has been suggested that the right of the manufacturer is not merely the original manufacturer's right of ownership in the article, but that it is a right in the brand name or in the patent which continues down through the merchandising of the article to the final end sale to the consumer; and that because of that, he should have the right to fix the end price. Do you have any comment to make on that?

Dean GRETHER: No, that was the view taken by the United States Supreme Court in the old Dearborn Case, which was the original case arising

out of the so-called fair-trade law. And it was, I think, the basis for the acceptance by the court of resale price maintenance, in that particular set of circumstances.

It is true that trade mark rights are very fundamental rights. That is, the trade mark is jealously protected in our courts. Also the trade mark is a form of property right which is nurtured and protected, and is often the most important piece of property owned by a manufacturer -- the goodwill attached to his trade mark.

Therefore in answering the question I think it is true that there is something inherent in any individual situation, that it might happen in a given circumstance that the play of competitive factors in the marketing channels might produce results contrary to the interests of a given manufacturer.

It is always true, in competition, in the marketing channel. The issue here is whether, in order to protect himself, a manufacturer should be allowed to enter the marketing channel and fix the price structure. Some of them do not want this burden of responsibility. They assume they can protect themselves in any event -- and some of them do. It is just a difference in attitude.

It is a very complex pattern of relationship. It becomes complicated by the play of competition in the marketing channel, and especially by this group

factor about which I spoke earlier. Because, if in a given area the dealers who are the outlets have the ability to behave as a unit in backing the manufacturers, it becomes a very difficult business.

In other words, if they can put pressure upon him to protect them in the local market price structure, that is so. But if they cannot, and do not behave as a unit, then it becomes a matter of whether this is preferable, or something else is preferable, in terms of factors playing around in competition.

So far as I am concerned I can see why some manufacturers take this view, in the circumstances surrounding them. Whether it is a sound view becomes very heavily a matter of judgment.

It happens that in my case I do not feel that the play of circumstances arising out of this particular element in our production and marketing system is sufficiently important to change the law of the land.

That is, in other words I do not feel that the Supreme Court in the United States, in the original case, was looking at all aspects of the situation. But, far be it from me to dispute the decision of the learned judges of that court. I am looking at it from the standpoint of the play of competition in general. That is, they did not look at other elements of the situation, and they focused merely

upon this trade mark aspect.

THE CHAIRMAN: It was your view that I wished to have. We do not have a Dearborn decision in Canada.

Dean GRETHER: I understand that.

THE CHAIRMAN: Dean Grether, we are greatly indebted to you for having come to us and having given us this quite extensive analysis of the economic position regarding resale price maintenance, and the use of leaders and loss leaders.

So far as we are concerned, we have no further questions to ask you. However, if there is anything you feel that you would wish to add, we will be happy to hear it.

Dean GRETHER: As I said earlier, I did not come to inflict my views upon you, but rather to try to be helpful by giving any information I might have. I have no desire to make any further comment.

THE CHAIRMAN: Well, I am sure that your comments will be highly useful, and that they have been greatly welcomed. I would only repeat that we are greatly indebted to you and that we wish to express our appreciation for your having assisted us. I might add, as so many in this room will know, that this is the kind of courteous and generous help we have been used to receive from distinguished citizens of the United States whenever we have asked for their assistance. Once again may I say

that we are grateful for the assistance you have
given us on this occasion.

--- Luncheon adjournment.

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--- Upon resuming at 2 p.m. on Monday, September 13, 1954.

REPRESENTATIONS:

The Imperial Tobacco Company of Canada Limited,

Represented by:

Mr. A. R. Tilley, Vice-President.

THE CHAIRMAN: Are you ready to proceed,
Mr. Wickwire.

MR. WICKWIRE: Yes. We have here today Mr.
A. R. Tilley, the vice-president of the Imperial
Tobacco Company of Canada Limited.

THE CHAIRMAN: Do you wish to present a
brief for the company, Mr. Tilley?

MR. TILLEY: No. The arrangement was,
with Mr. Davidson, that I would be here merely to
answer questions which you gentlemen might wish to
put to me.

THE CHAIRMAN: Mr. Wickwire, have you any
questions to ask?

MR. WICKWIRE: Mr. Tilley, you are vice-
president of the Imperial Tobacco Company of Canada
Limited?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: And I suppose in such capacity
you are familiar with the material collected by the
Director of Investigation and Research commonly
known as the Green Book?

MR. TILLEY: Yes.

MR. WICKWIRE: And on page 207 of that book -- perhaps you have a copy of it -- is set out the method of distribution of standard brands of cigarettes, within Canada. Are you familiar with that particular part of it?

MR. TILLEY: Yes.

MR. WICKWIRE: Is the method of distribution as set out beginning at page 207 substantially correct?

MR. TILLEY: Substantially, yes.

MR. WICKWIRE: Are there any major differences, or any differences that you would care to enumerate?

MR. TILLEY: Well, the only differences I would like to refer to at all is that we no longer classify our accounts into "A" "B" and "C". We have what we call accounts which purchase on a wholesale basis, and accounts which purchase on a retail basis -- the two classes. We have discontinued the question of "A" "B" and "C" accounts. There are accounts which purchase from us at our selling price to jobbers, to wholesalers, and accounts which purchase from us at our price to retailing houses.

THE CHAIRMAN: That is, they are just --

MR. TILLEY: We have just two prices, in other words, Mr. Chairman.

THE CHAIRMAN: You have two prices.

MR. TILLEY: Yes, two prices. Our customers

are put into categories -- and we are talking about cigarettes now. They are put into categories, depending upon which price they buy at.

MR. WICKWIRE: And the first category is to wholesalers and jobbers?

MR. TILLEY: Yes, that is right.

THE CHAIRMAN: All people in that category, if there are any others?

MR. TILLEY: Yes.

MR. WICKWIRE: And the second one is direct to the retailers?

MR. TILLEY: Direct to retailers, yes.

MR. WICKWIRE: Formerly you had three accounts, did you -- "A", "B" and "C"?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: As suggested in the Green Book beginning at page 207, and the following pages?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: When did you make the change? When did you change from "A" "B" and "C" accounts?

MR. TILLEY: Actually, the classification into "A" "B" and "C" accounts started about 1934 or 1935 and, for all practical purposes, was discontinued in 1946 -- although the use has continued. That is just because, through long practice, we will still hear people refer to "A" accounts or "B" accounts or "C" accounts. Reading the evidence of this Commission we have seen that. But, so far as we

are concerned, it was discontinued in 1946.

MR. FAVREAU: Well, when you just stated that this was a substantially correct statement for the present state of affairs --

MR. TILLEY: Yes.

MR. FAVREAU: Do you mean that it is still generally prevalent in the trade, for your company, since 1946, that you have only two types of accounts?

MR. TILLEY: What I meant to say was -- and we are really only arguing about designations now.

MR. FAVREAU: Yes, I understand.

MR. TILLEY: The thing is still substantially correct, that you have one group buying at the wholesale price, and a group buying at the retail price. What we are talking about now is the designation, as to how you call them, that is all.

THE CHAIRMAN: You still have the same classes of accounts?

MR. TILLEY: Yes.

THE CHAIRMAN: You group them now under one item?

MR. TILLEY: Yes.

MR. WICKWIRE: Formerly when you designated "A" "B" and "C" accounts, "A" and "B" accounts got the same price.

MR. TILLEY: Yes.

MR. WICKWIRE: And "C" accounts paid a little more?

MR. TILLEY: That is right.

MR. WICKWIRE: And the retailer paid still more.

MR. TILLEY: No, not from us Mr. Wickwire.

MR. WICKWIRE: Oh, I see. The retailer then bought from the jobber or the wholesaler?

MR. TILLEY: Yes.

THE CHAIRMAN: "C" accounts were the retailers who bought direct.

MR. TILLEY: "C" accounts were the retailers who bought direct from us, yes.

MR. WICKWIRE: Do you still have any retailers buying direct from you?

MR. TILLEY: Yes.

MR. WICKWIRE: And they were formerly "C" accounts?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: What are the considerations that determine which retailers can get on "C" accounts or on direct purchase?

MR. TILLEY: Well, are you asking me what are the considerations at this very moment or what were the considerations?

MR. WICKWIRE: What are they now at this time.

MR. TILLEY: Well, frankly the opening of a "C" account, to use your terminology --

MR. WICKWIRE: Well, we will use yours,

if you prefer; they are the same thing?

MR. TILLEY: Yes.

THE CHAIRMAN: The direct retailer accounts.

MR. TILLEY: The opening of a direct retailer account rests with our ten branch managers across the country. They have authority from head office to open a direct retail account. Whether each one of the ten would give you exactly the same answer that I might give you is a matter which I would not be prepared to stand up and say is actually correct. In other words, when you have a general policy you can work within the framework of that, and various people react differently to a different situation.

Briefly speaking, a direct retail account must have a combination of a number of items. He must (1) be interested in the tobacco business as such. In other words the tobacco business is not merely a sideline. Then (2) he must be in a location where there is probably a very considerable volume of business, or a volume of business being developed. He must be interested in developing that business. It is probable that most of our branch managers would like to have him in a location where there would be some advertising value to be gained.

He must be prepared to assist us in the introduction of new lines. He must be prepared to carry out our stock control policy or to maintain the freshness of goods. He must have sufficient credit

of course. Then, I believe that most branch managers would like to see some competitive advantage for the company -- in other words, either negative or affirmative credit advantage. What I mean by that is that it is possible that some branch managers, if a dealer got putting our goods behind in a corner, or not showing our goods, and so on -- that he might feel that he had to open an account in order to get proper cooperation. In other words, if opposition companies sold him, chances are fairly great that our lad would feel that he would have to, for competitive reasons.

On the other hand he may be a chap who is doing a particularly good job for our branch manager in pushing lines, and so on, and he might be the first one.

And, finally, I would merely like to say this, that on the whole our number of direct retail accounts is decreasing, and has been decreasing for the last 15 years, at least.

THE CHAIRMAN: When you say it has been decreasing, do you mean that you have closed them out, or that they have stopped business?

MR. TILLEY: Either one or the other.

THE CHAIRMAN: You have sometimes closed them out?

MR. TILLEY: Yes.

MR. FAVREAU: And when you say that the number, or the over-all number of your direct accounts has decreased, I presume that does not mean that you have not opened new direct accounts, does it?

MR. TILLEY: No, we have opened the odd one, yes. But you were asking about the general consideration; and the general consideration of a branch manager, of course, if he is in the process of reducing his total number -- well, it would be illogical for him to go ahead and open a tremendous number.

MR. WICKWIRE: Now, Mr. Tilley, within those general considerations you mentioned volume, that you must have sufficient volume.

MR. TILLEY: No, I do not think I did say that.

MR. WICKWIRE: Well, perhaps not, but I wrote it down. The first thing you mentioned was an interest in the tobacco business, as such.

MR. TILLEY: Yes.

MR. WICKWIRE: In other words, his principal interest should be that of a tobacconist, is that correct?

MR. TILLEY: I do not think I went as far as to say that it should be his principal interest. I said that he had to be interested in tobacco, seriously, yes.

THE CHAIRMAN: It has to be one of his

principal interests.

MR. TILLEY: Yes, one of his principal interests.

THE CHAIRMAN: It is not just a sideline?

MR. TILLEY: That is right, it is not just a sideline.

MR. WICKWIRE: And I wrote down, secondly, that he must have sufficient volume.

MR. TILLEY: I said that his location would have to be such that it might be expected that a considerable volume could be developed in that store.

MR. WICKWIRE: Well --

MR. TILLEY: I am sorry, Mr. Wickwire, that I cannot quote my words back exactly.

MR. WICKWIRE: Well, I could not write all your words down, but I did put down the word "volume"-- just to refresh my mind on the subject. But is there any criterion in numbers that he is required to have, or any amount, or any volume of business?

MR. TILLEY: No.

MR. WICKWIRE: On a weekly or monthly basis.

MR. TILLEY: No.

MR. WICKWIRE: And might it be that your direct buyers now, or some of them, have less volume than prospective direct buyers?

MR. TILLEY: Yes.

MR. WICKWIRE: And I am assuming that tobacco is one of the principal interests in most cases?

MR. TILLEY: Well, I don't know; that is not quite so easy to answer on that basis. I do not think I feel myself in a position to answer that.

MR. WICKWIRE: Well, does Imperial Tobacco Company carry any of these direct accounts at the present time merely because they have been carrying them for a long time?

MR. TILLEY: Yes.

MR. WICKWIRE: Notwithstanding the fact that, in volume, their business is diminishing?

MR. TILLEY: I presume that, actually, Yes would be the proper answer to that question -- although the implications of it are not quite true. If you are trying to imply as to whether we look at each account each year and say, "This man's business is down by 5 per cent, and therefore we will close him out" -- the answer is No, we do not.

MR. WICKWIRE: What I have in mind, Mr. Tilley, is that ten years ago we will say dealer "A" had a very large volume which Imperial considered justified the company in keeping him on the direct list. Today, for one reason or another, the volume is substantially off. But because he is a very old customer, and has had privileges in the past of the "C" list, Imperial still gives him that listing?

MR. TILLEY: The answer to that is Yes. Of course, there are a lot of factors which enter into that, Mr. Wickwire. And I think, in answering your first question as to why we recognize certain direct retail accounts, I gave six or seven different factors which we take into consideration. Volume is purely one of them.

MR. WICKWIRE: Yes.

MR. TILLEY: In other words, a place which may have been a big tobacco selling location may still be an excellent advertising location. And, as somebody who is interested in advertising, I might wish to keep that account on, for that reason.

Or, on the other hand, as you have said, we do not too often close out accounts. And, certainly, if that particular account, for example, were to come up for sale, that is, if the proprietor were to buy, or we were to get new capital in, or any reason which caused us to change the account, we would then automatically review it, and we might well close it out, if we decided that the account was not a proper account to be continued as one buying direct.

MR. WICKWIRE: I suppose that the competition that your company might have in the area would also be a factor?

MR. TILLEY: Well, yes, that is a factor. And also competition in that particular store is a

factor. If every other company in the business is selling that account, it may well be that our local manager would be less loath to close out the account. You have somebody that you have been selling to for about 40 years, and all the manufacturers in Canada are selling him for 40 years, and it is pretty tough to come along and say, "We are sorry, but Imperial Tobacco Company will not sell to you."

Actually, on this volume question, we have shipping minimums, which are not strictly enforced but which, to a certain extent, have the effect of limiting these direct accounts.

MR. WICKWIRE: Well, would you have any objection to telling the Commission what the shipping minimums are?

MR. TILLEY: They vary from province to province. I am sorry I do not have that information with me.

MR. WICKWIRE: What would they be in the province of Quebec, for instance?

MR. TILLEY: I would not have the faintest idea.

MR. WICKWIRE: Or Ontario?

MR. TILLEY: No, I am sorry, I did not bring that information with me.

MR. WICKWIRE: But if the Commission wanted to have that information, you would send it in?

MR. TILLEY: Yes.

THE CHAIRMAN: You mean that it is a matter of branch policy, not general company policy?

MR. TILLEY: No, it varies from branch to branch, depending upon how frequently they can get shipments and what the freight arrangements are in the community, and so on.

THE CHAIRMAN: The branch manager settles the policy?

MR. TILLEY: No, it is actually established at head office.

THE CHAIRMAN: Oh, it is?

MR. TILLEY: Yes, but it is on the recommendation of the local branch, and the branch manager has full authority to pay no attention to it.

THE CHAIRMAN: And yet, it varies substantially from province to province, does it?

MR. TILLEY: Not tremendously. But my reason for refusing to answer the question is that, for example, in one province they may have a dollar basis -- that is, so many dollars, or that an order must have so many dollars; whereas, in an adjoining province they may have so many thousand cigarettes. And to endeavour to repeat the ten provinces across Canada -- well, I just do not have the figures in my head. That is all.

THE CHAIRMAN: Mr. Wickwire, would you ask Mr. Tilley if he would make those figures available to us?

MR. WICKWIRE: I asked him whether, if the Commission wished to have that information, he could give it to us, and he said yes, that he could.

MR. TILLEY: Yes.

MR. WICKWIRE: Would the Commission like to have those figures?

THE CHAIRMAN: I think perhaps we would like to have them, yes.

MR. WICKWIRE: Do I understand you correctly, Mr. Tilley, that the final word on who becomes a direct buyer, or a direct purchaser as a retailer, is at head office on the recommendation of the branch manager?

MR. TILLEY: No; it is on the branch manager's own authority.

MR. WICKWIRE: On the branch manager's own authority, you say?

MR. TILLEY: Yes.

MR. WICKWIRE: Well, you must have had occasion or occasions where a buyer or group of buyers have written to you at head office, or directly to head office, requesting such privileges?

MR. TILLEY: If they were requesting to be recognized as retailers, we would refer the matter to their branch -- to our branch manager -- and advise them that it comes within the jurisdiction of the branch manager, and that they should apply to Mr. So and So at such and such a place.

MR. WICKWIRE: And does the same thing apply to wholesalers and jobbers?

MR. TILLEY: No.

MR. WICKWIRE: That is decided upon at head office?

MR. TILLEY: That is right.

THE CHAIRMAN: One question further about direct accounts. Assuming that a retailer complies with the conditions you have described, Mr. Tilley, would he, as a general rule, be given direct buying privileges, if he applied for them? Or is it a matter in which discretion is usually exercised against him?

MR. TILLEY: Well, all I can say to that is that the number of direct accounts is going down all the time. And this seems to indicate that the branch managers, in the exercise of their discretion, are on the whole reducing rather than increasing them.

THE CHAIRMAN: Would you go so far as to say that branch managers are opening new accounts only when they feel that it is necessary to do so for some special reason -- that is, to meet competition, for instance, in a store, from other companies which sell direct?

MR. TILLEY: I think that is a reasonably close statement on that; but it may not be 100 per cent true across Canada, sir.

THE CHAIRMAN: I am just wondering how far the rules or the conditions which you have described are final in the matter, or whether really, while those conditions must exist, that it is still pretty unusual to obtain direct buying privileges.

MR. TILLEY: Well, we are not going across the country opening up one or two hundred direct accounts each year, or anything like that, at this point.

THE CHAIRMAN: It is a policy that these conditions must exist --

MR. TILLEY: Yes.

THE CHAIRMAN: -- before direct buying privileges can be obtained?

MR. TILLEY: Yes.

THE CHAIRMAN: It is not the policy that, if those conditions do exist, they will be granted direct buying privileges? That is a quite different approach, is it not?

MR. TILLEY: Well, I don't know whether we are so far apart, actually -- because, among the conditions I outlined was the one that there would probably be some competitive influence in the decision.

THE CHAIRMAN: Yes, that is one condition. But what I was getting at is that your policy is not in favour of opening wherever these conditions exist?

MR. TILLEY: That is right.

THE CHAIRMAN: It is a policy of, you might almost call it, general resistance to opening new ones, rather than the general approval of them?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: Your branch managers have complete autonomy in opening and closing these direct accounts?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: There is no appeal from them to you?

MR. TILLEY: Well, I don't know, Mr. Wickwire, whether there is direct appeal or not; but there most certainly is indirect appeal.

MR. WICKWIRE: There is indirect appeal, you say. You find that sometimes they come across your desk?

MR. TILLEY: I find that they not only come across my desk, but that they get to me personally by any person who happens to be a friend of mine and a friend of the account's.

MR. WICKWIRE: And in that way I suppose eventually any decision that you make is referred back to the branch manager?

MR. TILLEY: Mr. Wickwire, in my experience, so far as I personally am concerned, there has never been any change in a branch manager's recommendation.

MR. WICKWIRE: That is fine. Now, what were the factors which led to the granting of what was

formerly called the "A" listing to certain chain grocery organizations?

MR. TILLEY: Well, that is a fairly long story. It is not simply a question of saying two or three words. Perhaps if the chairman would permit me to expand a little bit in my answer, rather than just answer it shortly, it would be better.

THE CHAIRMAN: Certainly. We want to get the real story, if there is a story, rather than just a short statement of results.

MR. TILLEY: Well, we have been quite well aware of the fact that chain stores, or multiple unit operators, as we care to call them, had been expanding their business in Canada, particularly in big communities, for a considerable number of years, and particularly since the last war.

Starting about 1950 we began to study this thing very carefully. The actual decision to open them I believe was taken at a meeting in Montreal in 1952, in the summer. We examined our whole structure in regard to these stores and discovered several rather surprising things about it. We were actually selling to one operator, a so-called food chain operator. We were selling to another operator in some territories, and not selling to him in other territories. We were in some instances delivering to a central warehouse -- in other words the food chain was performing the complete wholesale function.

And we were just delivering to a central warehouse, and he was distributing to his own stores. And in some locations we were delivering individually to the stores. We were in a position where, in western Canada -- and I believe there may be some in the east, but the example which comes to my mind is in western Canada -- there are certain stores which are common names which are tied to a certain wholesaler. In other words, they buy their supplies from a given wholesaler.

THE CHAIRMAN: You mean individually operated stores?

MR. TILLEY: Yes. They are buying all their supplies from a certain supplier.

THE CHAIRMAN: Yes; stores like the Red and White group?

MR. TILLEY: That is right; that is exactly it. They were in the position where their wholesale branch was buying at our wholesale prices, whereas their competition in the form of Safeway and other food chains were buying at our retail prices. And, of course, the chain operators also wanted the best prices they could possibly get.

So, as I say, in the summer of 1952 a decision was made that, at a convenient time, we would commence selling whatever of these groups decided they would accept goods in a central warehouse and distribute to their stores. So we

actually opened six in November of 1952; I believe that is the date.

MR. WICKWIRE: Those were the first six?

MR. TILLEY: Yes, those were the six. And that is all that happened.

MR. WICKWIRE: That is, in total; there has been only six opened?

MR. TILLEY: Yes.

MR. WICKWIRE: And they were all opened at one time?

MR. TILLEY: Yes, within weeks of each other at any rate. Now, that does not mean, of course, that stores are open everywhere. For instance, in the case of Dominion, they have a warehouse in central Canada, but they have no warehouse in the maritime provinces. We sell to Dominion and deliver to their individual stores in the maritime provinces, and they pay the retail price.

MR. WICKWIRE: Because they have no warehouse?

THE CHAIRMAN: The direct retail price?

MR. TILLEY: Yes, they pay the direct retail price.

THE CHAIRMAN: Not the wholesaler's price?

MR. TILLEY: No.

THE CHAIRMAN: Not the wholesaler's retail price?

MR. TILLEY: No, not the wholesaler's resale price, no.

Then, there is another question. We have been talking very loosely about opening these accounts. Actually, what we did was to re-categorize them. They were all customers of ours previously to that change in category. And the thing so far as we were concerned, was to reduce the number of places to which we shipped.

MR. WICKWIRE: Customers, in what capacity?

MR. TILLEY: As retailers.

MR. WICKWIRE: As a retailer?

MR. TILLEY: Yes, as a direct retailer.

MR. WICKWIRE: At that time, I choose to call it -- perhaps incorrectly -- the "C" account?

MR. TILLEY: That is right.

MR. WICKWIRE: And was it changed from "C" to "A"?

MR. TILLEY: Yes, in the locations which they supplied from their own central warehouse.

MR. WICKWIRE: Were there any other considerations, Mr. Tilley, at the time, other than those enumerated by you?

MR. TILLEY: I presume you are going back to certain evidence given in Toronto, are you?

MR. WICKWIRE: There has been the suggestion made that the chains, or semi-chains were bringing in large quantities of cheap American cigarettes?

MR. TILLEY: That is correct. I would only say this, Mr. Chairman, that I believe that the only

effect of those American cigarettes was to expedite our announcement of a decision already taken. Because the meeting to which I referred took place in mid-summer of 1952, and my recollection of American cigarettes was -- and I was in western Canada when it happened -- was that it was somewhere in the fall of 1952 before they came into the market.

MR. WICKWIRE: Had your company been subject to certain pressure before this by the chain organizations, to get the "A" listing?

MR. TILLEY: That is an old phase which goes back many years. They have always sought the best price, and in fact they were getting the best price from everybody but the tobacco industry.

MR. WICKWIRE: And this, then, was the final pressure which expedited your decision?

MR. TILLEY: I said it expedited the announcement.

MR. WICKWIRE: Yes, the announcement of the decision already taken?

MR. TILLEY: Yes. What we were really looking for was -- well, I don't know what we were looking for -- but anyway we had not made the announcement.

MR. WICKWIRE: Now, the chains, I take it -- their principal business, you will readily admit, is not tobacco, is it -- that is, the chain grocery stores?

MR. TILLEY: Oh yes -- well, -- I don't know how they break their sales down, I am sorry I do not know that.

MR. WICKWIRE: You do not know what percentage of their total sales would be tobacco sales?

MR. TILLEY: No.

MR. WICKWIRE: It would be very small, would it not?

MR. TILLEY: I cannot really say, Mr. Wickwire.

MR. WICKWIRE: Well, you have been in foodeterias and marketerias and food markets?

MR. TILLEY: Yes.

MR. WICKWIRE: And from your observation what would you say; would you say it was very small in proportion?

MR. TILLEY: Well, what is your definition of "very small"?

MR. WICKWIRE: I mean that this could not be considered their principal business-- that is, the sale of tobacco and cigarettes to the public?

MR. TILLEY: No; but I don't know that you can pick out any one particular item in a chain store and say that it is their principal item of business. That is my problem.

MR. WICKWIRE: Well, you can pick out tobacco as one product, and pick out meats as a

product, and pick out --

MR. TILLEY: Groceries?

MR. WICKWIRE: Yes, and canned foods as another product, and fresh vegetables as another product, and so on. In other words, what I am trying to find out, Mr. Tilley, is this, that these considerations which you have mentioned, by which the chains secured direct account privileges, how do they differ from other groups who, in total, could sell more cigarettes and tobacco than the chains?

MR. TILLEY: I do not think I know any groups, Mr. Wickwire, who could sell more.

MR. WICKWIRE: Supposing a cooperative group, or a group of substantial retail tobacconists, people whose main business -- that is, we will say more than 60 per cent of their retail trade, is in tobacco products. Supposing they are credit worthy, and they can conform to the considerations enumerated by you; how would it be possible for them to become wholesalers or jobbers, in order to be able to purchase at the same price as the chains?

MR. TILLEY: Well, it would depend entirely on the situation. Because considerations which govern the opening of a jobbing account do not necessarily govern the opening of -- I am sorry -- the considerations which govern the opening of a direct retail account do not necessarily govern the opening of a jobbing account.

MR. WICKWIRE: Well, if the considerations are different, in what way are they different?

MR. TILLEY: Well, they are different in a good many ways. In the first place, there are a considerable number of jobbers in this country, and many locations in the country are adequately serviced by the jobbers which are in existence.

In the second place, the essence of jobbing consists of supplying retail outlets and maintaining the proper warehouse facilities, and the usual credit requirements; and, again, assisting us in the introduction of certain brands or lines.

They are all factors which come into the decision whether or not to open a jobbing account. In other words, the question of advertising from a jobbing account, which is a factor in a retail account, does not matter in the average jobbing account.

MR. WICKWIRE: There has been a good deal of evidence before this Commission, Mr. Tilley, that the retail tobacconists as such are in a very bad plight because of loss leading, or so-called loss leading, or cut pricing in cigarettes. I take it that you are aware of that state of affairs?

MR. TILLEY: That is right.

MR. WICKWIRE: Now, it has also been suggested that there are perhaps in Canada 90,000 retail outlets.

MR. TILLEY: That is approximately right, yes.

MR. WICKWIRE: Not all of whom, I take it, earn their living by the retail sales of cigarettes.

MR. TILLEY: I do not think anybody does, probably, Mr. Wickwire -- except the cigarette girl in a night club.

MR. WICKWIRE: Well, she would not want to purchase these at a discount, I suppose, Mr. Tilley, because people like you and me would pay the full price -- plus some more, perhaps. Can you suggest to the Commission any method in the distribution of cigarettes which would help the plight of these people?

MR. TILLEY: Frankly, Mr. Wickwire, we are on the horns of a little bit of a dilemma in this problem.

We believe that, ultimately, the distributing trade in the cigarette business has to have a fair living. If they do not have a fair living, the distribution of tobacco products on the whole is going to drop off, with a consequent reduction in consumption. And yet, on the other hand, we also believe that the cheaper tobacco products are the more people are going to use them.

Over the years we have developed our present system of distribution, which has very small margins in it, we believe. Nobody has made a fortune out of it -- out of the distribution system. And the consumer, generally speaking, seems to be

satisfied with the prices which are prevailing -- although we would like to see those prices lower. But with our present cost load there is not much that can be done about that.

What concerns us in your suggestion which, I take it, is implied in your question, that --

MR. WICKWIRE: No, I am not making any suggestion. There is no suggestion in my question. My question was directed to you, to see if you had any suggestion to make.

MR. TILLEY: No. Actually, as a company, and as the person responsible for merchandising our products, we would be willing to listen to any scheme which we believe would reduce distribution costs, and at the same time provide the distribution which we think our product required.

MR. WICKWIRE: Of the stated 90,000 outlets of tobacco products in Canada, -- and I think the number has been broken down to show that there are 27,000 for the province of Quebec -- there must be a great proportion of those outlets which are not strictly tobacconists or whose principal business is not the sale of tobacco?

MR. TILLEY: That is right, yes -- very true. But I cannot give you the figure for it, if that is what you are asking.

MR. WICKWIRE: In Quebec do they have vending machines?

MR. TILLEY: Very few; they have some.

MR. WICKWIRE: They are not included in these outlets?

MR. TILLEY: No.

MR. WICKWIRE: There must be a substantial number of, shall we call it for the sake of clarity, bonafide tobacconists, people who are in the retail business, and whose principal business is the retailing of tobacco; is that correct?

MR. TILLEY: What do you mean by a "substantial number"?

MR. WICKWIRE: Well, is the so-called tobacconist a person who is on the way out, or has he still a chance to survive, in your opinion?

MR. TILLEY: Well, that is a very difficult one to answer, Mr. Wickwire. I think I had best answer the question by saying "not necessarily on the way out."

MR. WICKWIRE: Not necessarily; now, there must be some among them, in areas where the population is concentrated, who, as a group, could comply with all the general considerations which you have enumerated, and who might like to purchase either as a jobber or as a direct retail purchase, in order to compete with the lower prices in cigarettes which have pertained in these large metropolitan areas?

MR. TILLEY: That is probably right,

Mr. Wickwire. I mean that if you say there are people who want to get on those two categories -- well, there is no question about it.

THE CHAIRMAN: You probably have 90,000 of them?

MR. TILLEY: Yes, you are quite right. And it is just where you draw the line that is the difficult problem. Because you do reach the point where, the more shipments the manufacturer is making to the retail store the higher becomes the costs of distribution. Because today they are buying tobacco products from jobbers who deal in sundries, chocolate bars, confectionary and so on,-- including groceries. So that you are not making deliveries of one company. Furthermore, they are selling, in most cases, the products of all companies.

THE CHAIRMAN: That is, the jobbers are?

MR. TILLEY: Yes. So that you are not making deliveries of the product of only one company to a store. For all the cigarette manufacturers and confectioners and so on to start delivering individually to stores -- well, there is no question about it but that the distribution costs of the country as a whole would go up. And every account that we open raises the question: Where do you draw the line? Every additional one you add you are getting that much closer to shipping to everybody.

THE CHAIRMAN: It really amounts to this,

that for direct buying privileges you do need certain volume, or the expense of operating it as a separate account would be greater than is necessary now for both the manufacturer and wholesaler?

MR. TILLEY: Yes, that is right.

MR. WICKWIRE: Mr. Tilley, in Toronto the Commission heard a delegation from the Toronto Retail Tobacconists Association, which association submitted a brief which had been prepared by Mr. J. W. G. Hunter, Q.C.

MR. TILLEY: Yes.

MR. WICKWIRE: In which they set out correspondence between Mr. Hunter, on behalf of the association, and yourself?

MR. TILLEY: That is right.

MR. WICKWIRE: Do you recall that correspondence?

MR. TILLEY: Yes.

MR. WICKWIRE: Now, that is the sort of group that I had in mind. Will it ever become possible for a group such as that to be able to buy from the Imperial Tobacco Company in competition with the chains?

MR. TILLEY: I certainly do not say that it will not be possible, Mr. Wickwire. But we are dealing with a perishable product in the first place. And it is a perishable product which is difficult to handle in that, by law, the packages

there must be sealed. So that the only way you can protect the good name of your product is by seeing that those products are fresh, and that the wholesalers warehouse them properly, and so on.

The Toronto group never did satisfy me that they were going to warehouse our goods properly. In fact, I probably went much farther in my correspondence with Mr. Hunter than I needed to have gone merely to present to him the difficulties which we were facing in our merchandising policy.

I think I could have simply told Mr. Hunter a story that these people had no warehouse, no organization, and that we were not committing ourselves to selling anybody in advance until we saw what they had, and how they were going to operate, and that we were not prepared to risk our goods in their hands until they had proven that they could handle them properly. And we do sell some co-operatives. The door is not shut.

MR. WICKWIRE: I take it that you recall rather vividly the exchange of correspondence between you and Mr. Hunter?

MR. TILLEY: Yes.

MR. WICKWIRE: Was the main factor, in not permitting this group to get the same buying privileges, the warehouse factor?

MR. TILLEY: Well, no. In the correspondence-- which, by the way, I have not read for some months --

in the correspondence the principal difficulty that we see in this sort of thing is: Where would we stop? I have already explained to the Commission the difficulty in shipping to every individual account. Now, even if you take every ten wholesalers, or every ten retailers, in Canada, and make them into one group, you would still end up with nine thousand groups -- which is an unweildy proposition.

MR. WICKWIRE: Well, as I recall the correspondence, that group undertook at the outset to guarantee sales of \$2,000 worth of tobacco and tobacco products each week?

MR. TILLEY: I think it was \$4,000, although I would not want to quarrel on the point.

MR. WICKWIRE: All right, that is even better. Would that be sufficient in volume in order to entitle them, if that were the only consideration?

MR. TILLEY: We have no limit on a jobber, so far as volume is concerned, Mr. Wickwire. The essence of the jobber is that he warehouse, that he orders from us, and that he warehouse our goods and ships them and sells them to retailers.

MR. WICKWIRE: Well, the point I am trying to bring out, Mr. Tilley, is that I am not here defending the Toronto group, at all. But perhaps they are one of similar groups in many parts of Canada. Their principal business is that of tobaccoists. They state that they are being driven to

the wall, financially, because they cannot meet competition of the chains. The chains, as you know, have been selling cigarettes at a price substantially below that at which the independent tobacconists can offer them, and compete. Now, I am trying to find out if there is anything that can be done for these bonafide tobacconists in order to assist them in their plight, and help them to compete with the chains in the industry. And you say "maybe"?

MR. TILLEY: Well, Mr. Wickwire, let me put it this way: Are we not really making a lot or drawing a lot of conclusions on a lot of questionable grounds, perhaps? Let us put it that way. After all, the chain has got a certain cost in delivering goods, warehousing them, ordering them from us and paying us, and so on. And the whole argument tends to look at the difference.

Assuming that the Toronto merchants you are talking about are buying from wholesalers at our maximum selling price, there is a difference of two cents a package between that price and the price at which the chains buy from us.

Now, that two cents a package, in part at least, is eaten up by the cost of the chain store operating a central warehouse, and shipping to its own individual stores across the province. They do not do that for nothing.

On the other hand, the little fellow will

buy, and the goods will be delivered to his store, and he will pay it some time later.

MR. WICKWIRE: I think you previously told us that by granting the chain stores wholesale privileges, if they bought into a central warehouse the cost of distribution would be substantially lower, did you not?

MR. TILLEY: No, no; I did not say that. I merely said that we gave them our lower price, because they were buying from a central warehouse. I did not say the cost of distribution would be lower.

THE CHAIRMAN: Your cost would be lower?

MR. TILLEY: Our cost is lower, yes, because we are shipping to fewer stores. Yes, certainly our costs are lower; but I do not say that the overall ---

MR. WICKWIRE: Does not that principle apply if you sold to other buying groups?

MR. TILLEY: Well, is that not implicit, Mr. Wickwire, in our reduction of direct accounts? You see, the principle does not apply because when you get into -- when you get it widespread -- because we are only one company; and the individual stores are buying the products of 20 or 30 or 40 companies. So you have 20 or 30 or 40 people shipping to a whole lot of different locations -- to a greater number of locations than they are now.

MR. WICKWIRE: In the tobacco industry they are not buying from 20 or 30 or 40?

MR. TILLEY: No, but the jobbers who are distributing the tobacco products undoubtedly are. Because, with tobacco products they are distributing confectionery, groceries, drugs and so on. You see, there is no such thing as a tobacco jobber in the sense of one fellow who sells only tobacco.

MR. WICKWIRE: Well, I am trying to find out if there is anything that can be done for the plight of the group in Toronto, as an example; and I am sure there are other similar groups in Canada.

MR. TILLEY: You are putting the whole plight on the difference in their buying cost and saying to me that there is two cents a package difference between the price that one buys at and the price that the other buys at.

MR. WICKWIRE: I think that has been suggested to us by some of the people in the retail trade.

MR. TILLEY: And what I am saying is (1) that there may be two cents difference in price, if they are paying the regular price, but that there is not two cents difference in cost.

MR. FAVREAU: In ultimate cost?

MR. TILLEY: Yes, that is right. And also, that the reduction of which the Toronto group are complaining is in most cases more than

two cents a package. In other words, the reductions which really caused them to become annoyed, which was the price of \$2.99 a carton, or 30 cents a package, was in fact three cents a package -- which is more than the difference in price, and considerably more than the difference in cost; and it means that the chain operator was actually taking at retail a lesser markup than what the other fellow was prepared to accept.

MR. WICKWIRE: But the two cents a package would go a long way to enable him to compete, would it not?

MR. TILLEY: I do not know that it would. I do not know what warehousing costs are there.

MR. WICKWIRE: If there was three cents difference, then two cents would go two-thirds of the way.

MR. TILLEY: No, because to get the two cents he has to pay to establish a central warehouse, which he does not have to do today at all. He just sits behind his counter and the jobber looks after it for him.

MR. WICKWIRE: But if a cent of that goes to maintain the warehouse, then one cent would surely go some way to enable him to compete.

MR. TILLEY: I am not so sure that one cent per package difference would make such a tremendous difference in volume. In other words,

what I am trying to say is that if chain stores sold at 32 cents and regular retail stores sold at 33 cents, it is extremely doubtful if there would be a tremendous swing in volume to the chain stores.

THE CHAIRMAN: You mean if there is only one cent difference between the regular store and the chain store, that people would not go to the chain store?

MR. TILLEY: That is right.

THE CHAIRMAN: Can you say, from your experience in your company, if that is what happened in Winnipeg where, I believe, that is the fact?

MR. TILLEY: I believe so, yes.

THE CHAIRMAN: The chain stores have been selling at 32 cents?

MR. TILLEY: Yes.

THE CHAIRMAN: And the others, most of them, at 33 cents?

MR. TILLEY: Yes. And they have not increased their percentage to any great extent, I do not believe.

THE CHAIRMAN: Whereas, in some eastern cities, and in Vancouver, the margin between the chain stores price and the suggested retail price has been much more than one cent; and there has been a bigger swing in those places, has there not?

MR. TILLEY: Yes.

MR. WICKWIRE: Do you think the reduction

by the chains, or some of the chains, in the price of cigarettes has brought people into the chains just for the purpose of buying cigarettes?

MR. TILLEY: No, -- frankly, I don't know; but I think probably what has happened to a certain extent, anyway, is that the purchase of cigarettes has shifted from being a man's job to being a woman's job, in many cases.

MR. WICKWIRE: In other words, she is buying most of the groceries?

MR. TILLEY: Yes.

THE CHAIRMAN: They buy them by the carton, instead of by the package; and the woman gets them?

MR. TILLEY: That is right. I don't know, really; I can only go from my observation going in and out of chain stores, that is all.

MR. WICKWIRE: Mr. Tilley, can you give us a comparison of the cost of distributing a package of cigarettes in Canada as compared with the United States?

MR. TILLEY: No, I am sorry, Mr. Wickwire, I cannot.

MR. WICKWIRE: In which country is it higher?

MR. TILLEY: Well, again it depends entirely upon where you are, in each country.

MR. WICKWIRE: Well, speaking generally, is it not higher in Canada than it is in the United States?

MR. TILLEY: Yes, generally speaking. But, of course, in Canada -- or, let us put it this way, that in the United States, within 100 miles of New York City, for instance, you have a population as big as Canada's population. They smoke twice as many cigarettes a year as Canadians do.

THE CHAIRMAN: Where is that?

MR. WICKWIRE: But there is only about half as much tobacco in each cigarette, is there not?

THE CHAIRMAN: Where is it that they smoke twice as many?

MR. TILLEY: In the United States. So they have got twice as big a market within 100 miles of the city of New York as there is in the whole of Canada. And you cannot possibly expect your distribution costs on the Canadian market to be comparable.

MR. WICKWIRE: That would be obvious. But in an American city that is comparable in size to Montreal or Toronto, how would costs compare?

MR. TILLEY: Well, frankly, Mr. Wickwire, I don't know. I would say, on the whole, that it is probable that our costs are higher than theirs.

MR. WICKWIRE: And you cannot suggest any reason why this should be?

MR. TILLEY: Well, the principal reason is the smallness of our market. Because, again -- taking a city the size of Montreal or Toronto --

in the United States you would be selling twice as many cigarettes as you sell in the same size of city in Canada. So, to distribute twice the volume does not cost you twice the money.

MR. WICKWIRE: Most of the states of the United States have fair trade laws?

MR. TILLEY: Yes.

MR. WICKWIRE: Which enable the manufacturer to set the retail price?

MR. TILLEY: Yes.

MR. WICKWIRE: Have any of the American manufacturers of cigarettes taken advantage of that?

MR. TILLEY: I am not sure about the cigarettes, quite frankly. I believe some cigars are fair traded; but I do not believe cigarettes are, generally.

MR. WICKWIRE: In fact, there are no cigarettes fair traded, are there?

MR. TILLEY: Not to my knowledge; but I would hate to stand here and say No.

MR. WICKWIRE: Thank you. I have no further questions. Perhaps the commissioners would wish to ask some further questions.

MR. WHITELEY: Mr. Tilley, you mentioned that your company sells to some cooperatives?

MR. TILLEY: Yes.

MR. WHITELEY: What type of cooperatives are they?

MR. TILLEY: The western cooperatives, working out of Winnipeg -- what do they call themselves -- I have forgotten. Anyway, the cooperative people in western Canada are on our list.

MR. WHITELEY: A wholesale cooperative?

MR. TILLEY: Yes, that is right.

MR. WHITELEY: Are there any retail co-operatives to whom you sell?

MR. TILLEY: No, not to the best of my knowledge. I would have to check our lists, but I do not believe so.

MR. WHITELEY: Have you any information as to the channels through which this tremendous volume of cigarette distribution is carried on in the United States? Is it different from that in Canada?

MR. TILLEY: There are a number of differences in the American set-up, Mr. Whiteley. For one thing, the Americans have only one price. I am assuming that everybody in the United States takes advantage of the price discount which exists there. The manufacturers have one price, regardless of to whom they sell, be it a wholesaler, or a chain organization, or an individual retailer. They sell at one price.

MR. WHITELEY: I was thinking more of retail distribution.

MR. TILLEY: Well, in the United States

of course, there are wide variations in price in the same community.

MR. WHITELEY: I was wondering if there had been any shift from one class of retailer to another.

MR. TILLEY: Well, chain organizations on the whole have been increasing their percentage of business, yes, although not at a very rapid rate. They have a substantial portion of the cigarette business in the United States.

MR. WHITELEY: I think you suggested in one of your earlier answers that you considered that in the Canadian market, in order to maintain the volume of sales, you would have to have a wide distribution through, I presume, the existing channels?

MR. TILLEY: Well, through the existing retail outlets, if that is what you mean by "channels"--yes.

MR. WHITELEY: Yes. Do you draw any distinction between the situation as you see it in Canada, and the situation in the United States, where you have a much larger per capita consumption and, I take it, a larger share of distribution handled by chain stores?

MR. TILLEY: No, I think that is largely accounted for by price differences between the two countries. In other words, the largest per capita

usage in the United States is due largely to the relative cheapness of cigarettes, due to federal taxation, as compared with cigarettes in Canada. I do not think that the method of distribution has a tremendous amount to do with it. Cigarettes are pretty widely distributed in the United States, just about as widely as here.

MR. WHITELEY: If you have a larger proportion handled through the chain stores, then presumably the amount of business done by a proportionately larger number of other types of distributors must be smaller in relationship to that market?

MR. TILLEY: Smaller in relationship, yes,-- but not smaller in gross. I mean that the small corner store, the small corner grocery store, which is open when the chain stores are closed -- they will sell more cigarettes per unit in the United States than we do in this country, despite the fact that their percentage of gross volume is less than what it would be in Canada.

MR. WHITELEY: Due to this much higher per capita consumption?

MR. TILLEY: Yes, that is right.

MR. WHITELEY: And the size of the market, itself?

MR. TILLEY: Yes.

MR. WHITELEY: What would be the situation

in metropolitan areas if your company introduced a cash-and-carry sale at your warehouse?

MR. TILLEY: Well, sir, we would have to have a new warehouse.

MR. WHITELEY: Do you think it would draw a large amount of business?

MR. TILLEY: Do you mean at a special price, or at the regular selling price?

MR. WHITELEY: At the cash-and-carry price?

MR. TILLEY: Yes.

THE CHAIRMAN: You must anticipate that when you would think you would have to get a new warehouse.

MR. TILLEY: It would be chaotic, to start with -- there would be absolute chaos. The problem is, with a good many of these small merchants when we talk about cash-and-carry, and having people come and pick up goods -- that a lot of these small tobacco stores, sometimes small corner stores, which sell tobacco products, are one-man operations or, at best, a man and his wife. They have not the facilities for cash-and-carry operations.

In other words, if they came down to a large warehouse to pick up their goods, then they would have to come, presumably, to the warehouses of our three competitors to get their goods. So they would have five trips to make to various

locations in the city of Montreal every day -- because many of them buy every day -- as compared with the situation today, where they have the goods just laid down on their counters.

MR. WHITELEY: What would be the situation if you had a minimum unit for purchase -- and this is just speculation, of course.

MR. TILLEY: The problem in that goes back to the matter of freshness. If you put a minimum purchase on tobacco products, with no other control, you are in a position where, in order to get the minimum price, they will overbuy. And it means that you are selling stale cigarettes -- which is not a good thing for your brand name.

THE CHAIRMAN: Is it the policy of your company to pick up cigarettes after a certain length of time?

MR. TILLEY: Yes, we certainly try to. But we try to keep up the practice of picking up cigarettes to a minimum, by seeing that not too many get out. Because the business of picking them up is terribly expensive, in time.

THE CHAIRMAN: And that problem would be aggravated, by a system of minimum purchases at special prices?

MR. TILLEY: Very considerably aggravated, yes.

MR. WHITELEY: There are a few examples

which have been brought to the attention of the Commission of retail grocers who have formed a cooperative organization for their general lines of business, established a warehouse and, so far as the information goes, supply their members from this warehouse. What is the view of your company toward efforts by that type of organization to add tobacco stocks to their lines that they are handling in that way?

MR. TILLEY: Well, sir, in reply to the question I can only revert back to what I said previously, that we would look upon that proposition as similar to opening a wholesaler. We would examine the situation in the local community and, based upon the adequacy of the number of wholesalers we had, and the type of service we were getting from them, we might or we might not open the account.

I cannot sit here and say to you that in a given situation "A" or situation "B" we would or would not recognize that account.

MR. WHITELEY: The consideration you mention seems to me to differ somewhat from the attitude to which you referred toward the multiple unit operators whom, I presume, you recognize because of some other factors.

MR. TILLEY: We did not recognize them; they were already customers of ours. We merely re-categorized them, because they were performing a

wholesale function. We did not add to our costs of distribution, or add to our number of distributors in recategorizing the chain stores.

MR. WHITELEY: No, but I assume that the considerations you applied changing their category and putting them in the same class as the wholesalers were not the same considerations as you now raise in connection with recognizing a new jobber account. In other words, how would a cooperative unit operating in much the same way as the multiple unit corporation differ in your view as to their acceptance as an account entitled to buy at wholesale?

MR. TILLEY: Well, as I said an awful lot would depend on circumstances in that particular locality. Another of our problems is that we have, in practically every big locality in Canada, a considerable number of applications from wholesalers to be recognized as wholesale customers, people who wholesale either other products, or who may be on other wholesalers' lists of manufacturers, and not on our own. We tell all these people that we are sorry, but that we have enough wholesalers at the moment. We do not tell all of them that, but those whom we do not open, we do tell that. And we feel that if we were to open such cooperative groups as you mention in a community where already we had refused to open, let us say, jobber "A" "B" and "C", we would, in fairness to "A" "B" and "C", have to

open them. Therefore, instead of facing a problem of recognizing one new account in that territory, we would be faced with recognizing three or four of them.

MR. WHITELEY: Yes, but in the same community you may have your multiple unit corporate grocery chain that is buying at the wholesale price, and they are in competition with this voluntary multiple unit.

MR. TILLEY: Yes, but you are working on the assumption that these units are paying the maximum jobbers selling price, are you not?

MR. WHITELEY: All I take is the information that they are doing their own warehousing, and for other lines, and are buying on a jobber basis. But for tobacco lines they are unable to purchase on the jobber basis.

MR. TILLEY: Some of them.

MR. WHITELEY: Yes.

MR. TILLEY: But what I am saying to you is that they may very well be given the goods at a price which is comparable to their cost of putting their tobacco through their own warehouse.

MR. WHITELEY: Certainly so far as your company is concerned they are not purchasing at the price that their competitors, the multiple corporate chain are purchasing.

MR. TILLEY: That is right.

MR. WHITELEY: Although, so far as the illustration goes, they are performing the same function?

MR. TILLEY: But not in so far as we are concerned, if we are not selling them.

MR. WHITELEY: Well, you cannot say they are not performing the same function because you did not sell them.

MR. TILLEY: But they will be purchasing from the jobber who will be delivering to the individual stores, presumably.

MR. WHITELEY: Yes, but they are not being given an opportunity, so far as tobacco products are concerned, to perform in the same way as their corporate competitors performs.

MR. TILLEY: That is right, so far as tobacco companies are concerned.

MR. WHITELEY: Yes.

MR. TILLEY: That is implicit in the answer which I gave you some time ago, that nobody can suggest where you draw the line. If you could suggest where you draw the line, then it might be a much simpler problem.

MR. FAVREAU: Without naming them, if you do not care to name them, are there presently in Canada any large and representative chain store organizations who have not yet been recognized as the status of wholesale buyers?

MR. TILLEY: That would depend entirely on your definition of the word "large". I could perhaps express it in this way, that there are none of a size

comparable to the groups which are now recognized for wholesale purchases.

THE CHAIRMAN: That is the six to which you referred before?

MR. TILLEY: Yes, that is right.

THE CHAIRMAN: Mr. Tilley, with reference to the recognition of the six chain store organizations, your decision was reached, I think you said, about June of 1952?

MR. TILLEY: I said some time in the summer.

THE CHAIRMAN: Some time in the summer of 1952; and it was made effective in November?

MR. TILLEY: Yes.

THE CHAIRMAN: Was your company the first to recognize these stores?

MR. TILLEY: Yes.

THE CHAIRMAN: And did the others follow very soon after?

MR. TILLEY: Yes, sir. By that answer I would not suggest that the manufacturers all have a common list. I merely answered the question as you put it.

THE CHAIRMAN: That is all I am taking it to mean. You acted first and they followed. I am not going into the reasons for it. There might be lots of reasons for it.

MR. TILLEY: That is fine, sir.

THE CHAIRMAN: I think perhaps that completes

the questions the Commission wishes to ask.

MR. WICKWIRE: I have one further question which arises out of an answer Mr. Tilley made to the question asked by Mr. Whiteley. I refer to this question of picking up for staleness. How do you check the retail accounts who purchase through jobbers for staleness, to get those products off the market?

MR. TILLEY: Well, we have several methods.

MR. WICKWIRE: Could you describe generally what your system is, of policing?

MR. TILLEY: After all, this is a public meeting, and I do not want to give away all my trade secrets.

MR. WICKWIRE: Oh, well --

MR. TILLEY: Let me put it this way, that we have a system of going around to the retail accounts so many times each year, and checking their stock. We have a salesman in the field whose duty it is to go around the field and call on the various people.

MR. WICKWIRE: They work out of the ten branch offices?

MR. TILLEY: Yes, and they check. And there are means, from our packages, of telling how old the goods are. And we have other means whereby, in head office, from a more or less scientific stamping method we can tell how old the cigarettes

are at our big locations in Canada, once a month.

MR. WICKWIRE: And they get to the accounts that purchase through jobbers?

MR. TILLEY: Yes. Now, what happens with the jobbers is this, that a man will discover that he has to pick up constantly from the accounts of a certain jobber. If the jobber happens to be his own account, he will reduce that jobber's orders, accordingly. If the account happens to be the account of another salesman, either through the branch office, or he and the salesman with whose customer he is having trouble get together and they say, "John Jones is buying too much, and loading the trade." So they talk to the branch manager of the jobbing house, and they say, "You are not carrying out our principles of not loading the retail trade. We have had too many pick-ups from your customer. We want something done about it."

MR. WICKWIRE: But they are checked?

MR. TILLEY: Yes, definitely.

THE CHAIRMAN: One other feature. Perhaps it is a side issue from this inquiry, but it seems to be a fact that, with few exceptions, the standard brands of cigarettes in use in Canada are made of, we will say, a very similar type of tobacco -- straight Virginia, I believe it is called?

MR. TILLEY: Yes.

THE CHAIRMAN: And the cigarettes are nearly

always of the same size, and about the same weight, and they are packaged in the same number in a pack, with the same size and shape of pack, speaking generally. And, with one or two exceptions, they sell at the same price, normally -- that is, so far as the manufacturer is concerned. They sell at about the same price. Is that, in your opinion, a necessary feature of the cigarette industry in Canada? Or, are those necessary features?

MR. TILLEY: I think, actually, sir, we can answer the questions one by one. First, as to the type of cigarettes. The Canadian consumers it seems, on the whole, prefer the Virginia type of cigarette.

THE CHAIRMAN: Whereas, in the United States, they prefer the blend?

MR. TILLEY: That is right.

THE CHAIRMAN: Or have done, for a number of years; although, formerly, years ago, they had the Virginia too, did they not?

MR. TILLEY: Well, they did. But actually, if you go back into the history of the industry, it is from Turkish to Virginia in this country, and from Turkish to blended in the United States. And they have not really got into the Virginia cigarette as such. I think that disposes of the kinds of cigarettes.

Then, so far as the packaging is concerned,

my own experience in the industry is that the Canadian consumer on the whole prefers a hard pack.

THE CHAIRMAN: They did not take to the pack?

MR. TILLEY: They did not take to the soft pack, no. And where you have them in bulk packs, both kinds of packages, the tendency is for the hard package to prevail.

Then, as to prices, the situation in regard to current prices is that in February of 1953 on a Thursday the Minister of Finance announced a reduction of \$2 a thousand, and the excise tax of four cents a package. And certain cigarette manufacturers in Canada announced prices with that reduction. Imperial Tobacco Company on the following Monday announced prices providing for a further two cents a package off. The other manufacturers I am afraid had no option if they wanted to stay in business, than to follow what Imperial Tobacco Company did. It resulted in similar prices although they are not similar, actually, whereas one manufacturer provides a cash discount which no other manufacturer does.

THE CHAIRMAN: Do you agree with the contention that has been submitted to us -- not merely with regard to cigarettes, but with regard to other products, although in your case I am referring to cigarettes -- that cigarettes are really required to be sold to the public at the same price in all of

what we call standard brands. There are about a dozen or more of them that are all being sold at the same price. Some are cork tipped, and some are not.

MR. TILLEY: Well, are you getting back to--

THE CHAIRMAN: I am just trying to get at whether this particular industry requires a uniform price, or variations due to size of cigarette and quality of tobacco?

MR. TILLEY: Of course, there are two or three factors which enter into this. The size of the cigarette is limited by the excise tax.

THE CHAIRMAN: You mean it must be exactly the same size?

MR. TILLEY: No; but if you go beyond a certain size you start to pay more to the federal government.

THE CHAIRMAN: And then you have to charge more for the cigarette?

MR. TILLEY: Yes, and then you have to charge more for the cigarette. But, of course, there are actual differences in cigarette prices.

THE CHAIRMAN: That depends on the amount of tobacco in the cigarette?

MR. TILLEY: Yes.

THE CHAIRMAN: And it is related directly to that?

MR. TILLEY: Yes.

THE CHAIRMAN: So that you are not paying

more for the amount of tobacco you get?

MR. TILLEY: You could be. The duty is not worked out on a poundage basis. It is worked out on the total weight of the cigarette. It is not on the poundage of tobacco.

THE CHAIRMAN: Could you go into a smaller cigarette, such as they have in Australia? Could you do that legally?

MR. TILLEY: Oh yes, legally. But then, you are getting into this position, in Canada, with your fixed excise tax law. In Australia if you go into a smaller cigarette you get a lower tax rate on it. In Canada if you go into a smaller cigarette you pay the same amount to the federal authorities.

THE CHAIRMAN: So that probably it is not economical?

MR. TILLEY: It is not an economical proposition here. In Australia, yes, it is; it pays to go into a small cigarette over there because you can make a really substantial reduction in price. The manufacturer's selling price accounts for only a small proportion of the cost of the cigarette.

THE CHAIRMAN: What I am trying to get at is why it is that cigarettes are normally all of the same size, whether cork tipped or plain, or whatever kind, and that they are sold generally at the same price -- that is, apart from the cut prices we have heard about in the last year or two.

Other than that, they are sold generally at the same price?

MR. TILLEY: Well, of course, across the country in the first place manufacturers sell at the same price -- so that that is one reason for contributing to that.

THE CHAIRMAN: Do you think that, competitively, they must sell at the same price?

MR. TILLEY: Yes, I think so.

THE CHAIRMAN: Regardless of advertising as to special merits?

MR. TILLEY: Well, I would hate to be undersold.

THE CHAIRMAN: Regardless of the special merits alleged for special brands, the public does not think enough of those statements to pay more money for those cigarettes?

MR. TILLEY: There are such cigarettes in Canada which sell at higher prices, but they form a very small percentage of the market.

THE CHAIRMAN: They are not really standard brands, and their market is limited?

MR. TILLEY: Yes, that is right.

THE CHAIRMAN: But in your opinion it is nearly necessary that the prices by manufacturers should be the same?

MR. TILLEY: I think so, yes.

THE CHAIRMAN: Retailers at the present

time apparently are having some differences on that.

MR. TILLEY: They have some differences of opinion, yes.

THE CHAIRMAN: They are selling at different prices in some cases now, at any rate.

MR. TILLEY: Yes.

THE CHAIRMAN: Then, I believe that is all we have to ask. Thank you very much for coming here.

We will now adjourn until tomorrow morning at 10 o'clock.

--- Whereupon the hearing adjourned until the following day, Tuesday, September 14, 1954 at 10 a.m.

--- Page 3450 follows.

E R R A T U M

In this transcript where the
name GARFINKEL appears it
should be GORFINKEL. This
error was not found until
after transcription had been
completed.

RESTRICTIVE TRADE PRACTICES COMMISSION.

IN THE MATTER OF
an inquiry
Regarding Loss-Leader Selling.

--O--

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RESTRICTIVE TRADE PRACTICES COMMISSION.

IN THE MATTER OF
an inquiry
Regarding Loss-Leader Selling.

--O--

Hearing held (in public) in the Supreme Court
Building, Ottawa, Tuesday, September 14th, 1954.

--O--

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman.
Guy Favreau, Q.C., B.A., LL.B.,	Member.
A.S. Whiteley, B.A., M.A.,	Member.

--O--

APPEARANCES:

Mr. N.W. Wickwire, Q.C.,	} Counsel to the Commission
Mr. Paul Gerin-Lajoie	
Mr. R.M. Davidson,	Secretary to the Commission
Mr. L.A. Skeoch	Senior Economic Adviser to the Director of Investigation and Research.

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REPRESENTATIONS:

The Retail Merchants Association of Canada, Inc.
Represented by:
Irving Keith, Q.C. (Counsel)
David A. Gilbert, President of the Association
F.A.B. Rands, National Secretary

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THE CHAIRMAN: The hearing this morning, I understand, is to commence with a brief presented on behalf of the Retail Merchants Association of Canada. I believe Mr. Keith is here to present the brief. Is there anyone associated with you in the presentation of the brief, Mr. Keith?

MR. KEITH: Yes, Mr. David Gilbert, President of the Retail Merchants Association of Canada, and Mr. Arnold Rands, Secretary of the Association.

THE CHAIRMAN: Then you may proceed, Mr. Keith.

MR. KEITH: Mr. Chairman and Gentlemen, may I say the following:

It would appear from numerous presentations made to this Commission that the popular practice is for the party making a presentation to establish some arbitrary definition or definitions--and argue his case on this basis.

Many of the briefs submitted have been excellent pieces of logic and reasoning--provided the basic definitions were accepted as valid.

Another practice which seems to have found favor, particularly with chain store operators, is to set up boogy men and punch

holes in them. Tear them to pieces! It makes for spectacular entertainment, and since these straw men are not real, no harm is done unless one's attention is distracted by the performance.

The fact is that there are real problems in the retail field--and that they do require serious consideration and attention. There is no use trying to establish theoretical definitions of such terms as "loss leaders", "mark-ups", "gross profits" and so forth.

No two persons agree on the meaning of these terms - and certainly no two accountants or lawyers ever will. Nor is it necessary to go into detailed definitions, as long as everyone understands what is being discussed.

There is no doubt that there is an economic war in progress in the grocery, drug, hardware and appliance fields in Canada. No amount of defining, smoke screening and straw-man punching can alter this fact.

And we might as well be frank and admit that the big-fellows are trying to gobble up the little ones. This is a part of life itself. It goes on in the sea as well as on land, in public life as well as in private. The survival of the fittest is the law of business as well as of the jungle.

And there is no use of anyone thinking that it will stop - or that it can be stopped. So there is no use of us considering the theoretical questions of whether it is good or bad, or right or wrong. The fact is that it has gone on since the beginning of time and will undoubtedly continue until the end of time.

THE CHAIRMAN: I gather that what you intend to convey, in these last two or three paragraphs, is that these are inevitable economic processes, and that the enactment of laws will not be effective in overcoming them?

MR. KEITH: I think that is true. Then, to continue:

And since we are being frank about natural phenomena, let us be equally frank when we hear the big chain stores singing their own praises and asserting that they are motivated by altruism, by the spirit of self-sacrifice and the desire to serve the public good. Let us rather go all the way with our honesty and frankly recognize the fact that they are in business for one purpose, and one purpose only, namely to make money and to pay dividends to their stock holders. They are just as selfish, and just as interested in their own

purposes as the little independent grocer on the corner who is making a living for himself and his family and trying to pay for a car and buy a T.V. set.

When we get down to this hard bed of fact we have a foundation upon which to stand while taking a look around to see what is actually going on.

So let us continue to keep our feet firmly planted on this solid foundation. This Commission has been asked to make a survey of trade practices and in particular of loss-leader selling.

Obviously there is such a thing as "loss-leader selling", otherwise what are we all doing here?

Without theorizing and without making up arbitrary definitions, we suggest that the practical and realistic approach be taken. Let us inquire into the purposes it is intended to achieve, and what problems it creates. We learn much more about a thing by studying its effects than by theorizing about its nature.

Well, we started by being frank, let us continue that way. We can begin by saying that the organization employing loss-leader selling does so with the cold-blooded and

practical purpose of gaining advantage for itself. We can wash out, once and for all, any suggestion of altruism or a desire for the good and welfare of the human race. And furthermore, I suggest to the members of this Commission, that they examine very carefully and critically any argument submitted to them which is accompanied by, bolstered up by, or explained by an alleged desire to be public benefactors. Because, such an approach is eye-wash and poppy-cock and used to deceive and conceal other and real motives.

Loss-leading is definitely intended to bring advantage to the organization employing it. It is used for this purpose, and it has no other purpose.

What defence has been advanced for the practice? A very clever one!

Since efficiency, initiative, cleanliness, modernization, astuteness, and other excellent human qualities also give their possessors and practitioners advantages over competitors, so it has been said, why should private retailers object to them.

Of course, private retailers do not object to them. This is a piece of sophistry of the rankest kind. And furthermore, the



suggestion that the big stores are the sole possessors and practicers of these virtues is sheer nonsense.

Our first task today is to make clear, on behalf of---

I have left out the word "all" which appears in the printing of the brief, because it is pointed out to me that all the merchants are not members of the Association. We would like them all to be, but we might as well stick with the facts. To repeat:

Our first task today is to make clear, on behalf of the Retail Merchants of Canada, that they are not in any way suggesting to this Commission, or to the Government of Canada, that legislation be drafted to eliminate or reduce any of the advantages which derive from individual initiative, ingenuity, efficiency or astuteness either in buying or selling, or from the employment of new, better and cheaper methods of handling and distributing goods or merchandise.

Of all the people in our great country who are completely sold on the benefits of competition and the advantages of individual initiative, the independent retail merchants lead the list. These things are of the

essence of their very existence. The very fact that they are independent merchants is the clearest indication of how they think. They run their own businesses. They do not work in government offices, or as clerks in chain stores and department stores, or are they employed in one or other of the country's large financial institutions.

Furthermore they resent very much the implications that have been made by several who have appeared before this Commission that chain stores are the sole defenders, protectors and guarantors of freedom of competition in Canada. This just is not so.

I have the privilege and honor of knowing intimately many scores of retailers all across Canada, and I can say without hesitation that independence of thought and action and the desire to be free of restrictions, interferences, laws and regulations in their business affairs, is the characteristic of all of them.

It is not the desire of the Retail Merchants to eliminate competition, or to take away the advantages of initiative, modernization or large scale buying. But the independent retail merchant does object to loss-leader selling, which is a totally

different thing.

Indeed it is the very opposite to free competition, because the ultimate purpose of loss-leader selling is to eliminate (or at least substantially reduce) competition, and so to create the very conditions which do not permit individual initiative and astuteness to operate and flourish.

And I suggest that it is the knowledge that this is the case that led our government (in common with governments in other countries) to inquire into this practice. And I will go even further and say, that the Government of Canada, and the vast majority of the people of Canada, look with alarm upon anything which is intended to produce a concentration of wealth or power in the hands of a few, or to eliminate competition and destroy private enterprise in the true sense of the word.

Because, Mr. Chairman and gentlemen, there is no doubt that the world today is witnessing a pitch battle between the power of wealth on the one side and the power of numbers on the other. This is but one phase of that struggle. The unfortunate thing is--the alarming thing is--that the really important things are being destroyed

or damaged in the heat of battle.

This is the tragedy of all war: economic, political, religious or social. The innocent by-standers are the ones who get hurt. The principles involved are usually forgotten by both sides, or remembered only by lip service. It is the knowledge that these things are so that has led to this inquiry.

But let us not deceive ourselves as to who are the contenders, or what is the true nature of the fight or the kind of weapons being used. Those who are interested in gaining control of the retail trade of this country are not fools. The mere fact that instances of loss-leader selling have been negligible right from the time that this Commission was being considered and set up, and ever since it has been sitting, does not mean that there has been a change of heart or of tactics on the part of some of the chain, department, mail order, or discount organizations operating in Canada. Not in the slightest. It merely shows appreciation on their part of the attitude of the general public towards these practices, and the good sense not to arouse animosity and opposition during a time when it would be the most dangerous and detrimental to

their long range plans.

But when this inquiry is over, when everything has quieted down and your report has been completed, I venture to predict that the war will break out in real earnest, as it is now raging to the south of us, unless effective steps are taken to prevent it.

Why should loss-leading be outlawed? Well this question has been answered by a good many persons and organizations who have appeared before this Commission. Briefly, because it is a weapon which destroys real competition and ultimately concentrates wealth and power into a few hands - which we in Canada are agreed is a dangerous thing.

Right away I can hear ^{the} other side calling out, "What do you mean by loss-leaders?"

In reply, and I can only repeat, that I do not see anything to be gained by getting involved in a tangle of terms and definitions. We all know that loss-leading means selling below cost.

And again I hear the call - "What do you mean by cost?" Well, I think the State of California has defined this term in as simple and straightforward a way as possible.

"Cost applied to distribution means the

invoice or replacement cost whichever is the lower, of the article or product to the vendor or to the distributor and vendor, plus the cost of doing business by the distributor and vendor, and in the absence of proof of cost of doing business a mark-up of 6% on such invoice or replacement cost shall be prima facie proof of such cost of doing business."

I am not suggesting that six per cent should be contained in legislation in Canada. But I mean their approach to the problem--the lowest purchase cost, or replacement cost, plus the cost of doing business, is his cost. Then, to continue:

It is our suggestion that whenever a product is sold below cost it should be considered as a loss leader, and the firm, organization or individual who so sells should be deemed to be guilty of an offence.

Of course there are circumstances in which merchandise must be sacrificed, and no one suggests for a moment that a penalty should be involved in such occasions. However, we do suggest that for the purpose of enforcement, it should rest with the firm,

organization or individual who has sold below cost, if a charge is laid, to explain to the satisfaction of the magistrate or judge before whom the complaint is brought what the circumstances were, and to show that it was not done with the intention of injuring competitors or reducing competition. If this were provided, I am sure that charges would not be laid unless there had been a real violation of the spirit as well as the wording of the Act. On the other hand the almost impossible burden of proving "intent" on the part of the offending party would be avoided.

We are sure that merchants, and the public in general, would be satisfied to allow the magistrate or judges to exercise a discretion as to proof to their satisfaction that the intention behind the act was not to reduce and restrict competition and to injure competitors.

We say this because we feel that we must all agree that it is the intention and purpose behind the practice which is the essence of the offence. It would also perhaps be proper to assume that it would take more than one instance to constitute an offence. Certainly a single and isolated

incident of a sale below cost should not be considered loss-leader selling in any sense of the word.

The things which are sought to be avoided by this suggested legislation themselves point to the nature of the offence. This Commission has already had many examples to illustrate the detrimental results of loss-leader selling.

On page 25 of the Report prepared by Mr. T. D. MacDonald, and dealing with the "bread question", the following is quoted:

"Such a 'loss-leader' practice may result in the loss of goodwill for the product by the retail trade and eventually the consumer may find it difficult or impossible to purchase the bread in a large number of retail outlets."

and on page 26:

"The use of 'loss-leader' practice does tend to concentrate merchandising in fewer hands and it also tends to reduce the quality of goods available for the public by the simple process of destroying the only measure of quality."

And the excellent material presented by the Consumers Association on page 64:

"The particular form of 'loss-leader' practice that seems to us to be immoral and to be against the public interest is that whereby a financially stronger competitor sells at a loss as a means of putting a weaker competitor out of business.

"All means of eliminating competition, except those of offering better service or superior goods, are against the best interest of the consumer, and hence of the public. Any 'loss-leader' practice which creates small monopolies in the local trade concerned, and which reduces public freedom of choice, thus exposing the public to monopoly prices, should be curtailed.

"We feel that any cut-price carried on long enough, and at a low enough level to make competition impossible for shops, etc. with lesser financial assets, represents the type of 'loss-leader' practice Canada should ban. This should not include lowering of regular prices of special articles obtained at special rates by means of larger orders or greater volume of sales; nor should it include the normal savings to be gained from lower overhead or great

sales volume as in chain or department stores, in family businesses or otherwise low-expense enterprises. These represent legitimate merchandising methods that operate to the good of the consumer, and are a challenge to the businesses concerned.

"Any prolonged or systematic price-cutting, where reasonable profits are foregone without very adequate reasons for such behaviour, should be suspect, however, and could be considered an attempt to create a monopoly in the district in which it occurs. This monopoly is a form of restraint of trade and should be deemed an unfair practice."

That is the submission of the Consumers Association, Mr. Chairman. Then, to continue:

I would also refer to the brief submitted by the Canadian General Electric Co. which gives several examples of what happens where an article is used by a retail outlet as a loss-leader. Practically all other sales of that article in that area cease. The total volume of sales does not increase but in most instances it decreases. For example the figures on page 16 showing comparisons of

sales in B.C. and Alberta of the C.G.E.;
Iron, Kettle and Polisher.

One cannot but conclude that everyone loses in a practice of this kind except the financially strong outlet which eventually puts all its competitors out of the field entirely.

Of course, the loss-leader seller answers this in the same words as the elephant who was dancing among the chickens, "Every man for himself."

This attitude is well expressed in a statement contained on page 27 of Mr. MacDonald's report.

"If the merchant chooses to give away certain merchandise why should the government intervene? His competitor may not like it, but the consumer benefits, even if temporarily."

The chickens benefit too, for a short time. They have a nice, friendly, sociable dance with an energetic elephant partner. The catch comes in the last three words - "even if temporarily."

The important thing is to take the long range view. What is the long term objective and how can it be achieved?

I have already suggested that this

problem is only a part of a much larger one, a single phase of a gigantic struggle which is in progress all over the world. This struggle is between the power of numbers on one hand and the power of wealth on the other. The danger is that freedom will be crushed in between the opposing forces.

For the people of this country freedom of choice and initiative are more important than victory for either side. That is why, gentlemen, I think we are all here today. To look into this matter and to see if freedom can be preserved and what can be done to preserve it.

Well, first of all we suggest that you analyze the nature of this struggle. Certain large organizations, armed with the tremendous power of their financial resources, are in a position to use this strength to sell select articles of trade below cost, and thus to make it impossible for smaller competitors to carry on. No one is naive enough to misunderstand the purpose behind it. It is intended to destroy and eliminate competition. In the end two or three giants may struggle among themselves for supremacy and survival, and as the business man quoted by Mr. MacDonald on page 27 of his book says,

"temporarily the masses may benefit."

But what comes after, and what will be destroyed and what will be lost in the struggle?

Gentlemen, I will tell you what will be destroyed - our Canadian way of life: Freedom of choice, individual dignity, private initiative, all the things we consider important and which make life in this country worth while.

It is not a question of automatic, mail order and self-serve methods of merchandising versus so called old-fashioned "personalized" selling. This is the interpretation which certain business interests would have you place upon it. This is the conclusion to which they hope you will come.

We can tell you right here and now that it is not so. The Retail Merchants of Canada do not fear, or attack these sales methods. They believe, and daily prove, all across Canada that automatic selling methods cannot eliminate salesmanship and personalized selling and servicing. The most successful independent stores operate side by side with chain stores. Their owners and proprietors make a good living - in fact, in many cases a better living than

before the chain stores opened. No, gentlemen, our merchants are prepared to compete on the basis of service and salesmanship any day and every day of the week with the large chain, department, mail order and discount houses. This fact is substantiated by the figures of the Department of Statistics. I would like to refer the Commission to the reports of this Federal Department analyzing the operating and financial structures of The Independent Food Stores, Chain Stores, Hardware and Appliance Stores and Drug Stores for the years 1950 to 1952.

I will file them, although they are no doubt available to you. These are various analyses of these types of operation, showing the moneys invested by various organizations and individuals, and the total sales and operating costs and profits, net profits, taxes and everything, for the independent retail food stores, operating food chain stores, operating independent drug stores, hardware, furniture and appliances stores, and miscellaneous chain stores, which brings in furniture, and so on.

THE CHAIRMAN: You wish to file these? They can be marked as exhibits. Perhaps we had better have them identified now.

MR. KEITH: I may have to refer to them when you are asking me some questions later on. I could hand them to the Secretary later.

THE CHAIRMAN: Yes. However, we could mark them now, and hand them right back to you, so far as that is concerned. Do you remember, Mr. Davidson, what the last number was?

MR. DAVIDSON: Mr. Chairman, we did not have any in Ottawa.

THE CHAIRMAN: Then, these will be the first exhibits filed during the final hearings, here in Ottawa. We will mark them with the initial letters OF--the "O" for Ottawa, and the "F" for final.

EXHIBIT No. OF-1: Operating Results of miscellaneous chain stores, 1951.

EXHIBIT No. OF-2: Operating Results and financial structure of retail hardware, furniture, appliances and radio stores, 1952.

EXHIBIT NO. OF-3: Operating Results and financial structure, independent drug stores, 1952.

EXHIBIT NO. OF-4: Operating Results of chain food stores, 1951.

EXHIBIT NO. OF-5: Operating Results and financial structure, retail food stores, 1952 (independent).

THE CHAIRMAN: Mr. Keith, you may be wishing to refer to these?

MR. KEITH: Unless the members of the Commission wish to ask me questions, I will not, particularly.

THE CHAIRMAN: We will keep them here, anyway. If they are required, they will be available.

MR. KEITH: I presume there is no doubt about it that these statistics are made up from the figures supplied to the Department by these various organizations, showing their operating expenses and, by the way, these are the last years that they had. Apparently it takes them about that length of time to get this material into printable form. That is the reason some are for 1950 and others for 1951, and others for 1952. However, they are the latest information available. Then, to continue:

The operating expenses of the Food Chains varied from 12.6% to 15.54% of sales with an average of 12.67% over all types.

For this same period the national average for independent stores, handling the same lines of merchandise, varied from a low of 10.48% to a high of 10.85%.

That is almost 2% below the cost of operation of the chain stores. Some suggestion was made

to this Commission in some of the briefs that the chain operations effected great savings which, in turn, were passed on to the consumer, the customer.

Well, Mr. Chairman and Gentlemen, you cannot pass on something that you do not have. There is no saving in chain operations. In fact, it is a more expensive type of operation than the individually owned and operated store. This, of course, is not to be wondered at, when one considers all the facts. The man who owns his own store, and is there personally and supervises it, and keeps his eye on things, is bound to keep expenses down below what a paid employee would do. That is of course the limit that there always is on the side of any organization,--not just a merchandising organization--as it becomes unwieldy and more expensive to operate. Because, necessarily, more and more of its activities are carried on by more and more employees, with more and more possibility of inefficiency and waste involved.

However, the point I wish to make, and which these figures show, is that the consumer does not gain any benefit from the chain type of operation in overhead cost savings, because the overhead cost is higher in that type of operation.

MR. WHITELEY: Are the figures you use here on the same basis for different types of organizations?

MR. KEITH: They are on the same basis, yes. The Government statistics indicate the type of merchandise being sold.

MR. WHITELEY: But I was referring more to the nature of the operation--food chains, for example, have operations extending all the way from the central warehouse they carry on, right down to the individual unit store. Do the figures you use embrace their total scale of operations?

MR. KEITH: I only know what the Government have put out there, and indicate what expenses are included in it. They do not include the cost of the merchandise. These costs are purely as set out there--wages, light, heat, taxes, and so on.

MR. WHITELEY: Do you include the cost of the central warehouse?

MR. KEITH: I don't think so; that would be in the cost of the article charged to the retail outlet.

MR. WHITELEY: Have you examined these figures to see whether they are on the same basis or not?

MR. KEITH: The same items of expense are set out in both of them.

MR. FAVREAU: But you are asking whether the cost to the food chains includes warehousing, also.

MR. WHITELEY: Yes.

THE CHAIRMAN: That is, whether the operating costs of chain stores include everything from the acquisition---

MR. KEITH: I would not think so.

THE CHAIRMAN: ---by the central organization, to the disposition in the retail unit.

MR. KEITH: I would not think so. I take it that these figures show the rent of the store, the taxes on the store, the light, the heat, the salary of the employees--all that type of thing.

THE CHAIRMAN: That is, you have not examined them.

MR. KEITH: Well, I can read off the list.

THE CHAIRMAN: You are under the impression that these figures eliminate the wholesale function that is done by the chain store?

MR. KEITH: I think there is nothing to indicate that that would be included in it.

MR. WICKWIRE: Perhaps I can be of assistance to Mr. Keith and to the Commission on this point. My understanding is that, so far as the chain is concerned, the figures cover both the wholesale and the retail operation of the chain, and that they also include all salaries of chain store operations. Whereas, in the case of independents, no salaries are included in the figures.

THE CHAIRMAN: The salaries are only included in the case of corporations?

MR. WICKWIRE: That is right.

MR. KEITH: I think that is probably correct, that it includes employees' salaries. That would probably not include owners' salaries. But the other item appears to be similar. The chain breaks it down into executive salaries and other employees, occupancy, heat, taxes, licences, insurance, repairs and maintenance, depreciation, supplies, advertising, communications, delivery, bad debts, and other expenses, and small miscellaneous items. That apparently is brought in here--except that there is no heading for executive salaries. But I do not think that that has any significance to the consumer. If the executive of the chain store takes their salaries out and includes them in the expenses, then they would have to put that item back into the profits. And, so far as the consumer is concerned, I do not think it matters greatly to him on what the chain spends its money, or how its auditors make up the books, or what they include in the expenses. It is paid. It is gone. The amount of that item comes out of the goods that are sold. It does not come out of heaven, or any imaginary place.

MR. WHITELEY: That may be true; but if you have already got that in your figure for the chain stores, the proprietor of the independent store also gets his living out of the store, and

you have not got his expenses in there.

MR. KEITH: I am coming to that. His profits average 4.05 per cent, as shown in there, whereas according to the reports on the operations of the chain stores, even taking out these executive salaries out of the expenses account,--leaving them out--it comes to around 3 per cent. So that if you add the cost of doing business, plus profits in both cases, you still get a 1 per cent advantage in favour of the independent operation.

MR. FAVREAU: You have a difference of .5.

MR. KEITH: The point I make is that there is no differential there to hand on to the customer, as has been suggested to this Commission. You cannot hand on something that is not there.

MR. WHITELEY: Well, the figures you are giving us are not on the same basis. You have, in the case of the chain stores, their central warehouse operations and their retail operations; and in the case of the independent store you have only the retail operations.

MR. KEITH: I do not know any other way it can be broken down. You have their expenses, including executive salaries, plus profits. You have the same on the independent side. You have the expenses of their way of doing business, plus profits, which includes owners' salaries, or

executive salaries. And the independent operation is still less expensive--a less expensive form of operation.

MR. WHITELEY: But you have not shown anything as to what the expenses are for the same operation. In other words, what you are comparing is, I presume, that the larger chain stores buy direct from the manufacturer.

THE CHAIRMAN: In the main.

MR. KEITH: I presume that they do, in most cases.

MR. WHITELEY: Taking goods into a central warehouse, and distributing them.

MR. KEITH: I presume they do.

MR. WHITELEY: But very few of your retail operators would buy in that manner, would they?

MR. KEITH: Well, I am not dealing with the whole merchandising process. I am only dealing with what the retail merchant does, and the service he provides, and the cost that goes into that service.

MR. WICKWIRE: I do not wish to interrupt my learned friend Mr. Keith, but with respect to the operating results of chain food stores for 1949, published by the Dominion Bureau of Statistics, at page J-8, there is this note:

Comparison of head office and warehouse

expenses, and store expense. A sufficiently large number of firms in the largest size group reported a breakdown of expense to permit separate tabulation of expenses for stores and for warehouses, including head office. Store expenses formed approximately 74 per cent of the total operating expenses, with the remainder attributed to head office and warehouse. Salaries paid to store employees formed two-thirds of the store expense, but salaries to head office and warehouse were only half of the total head office and warehouse expenses.

That might help to clarify this point.

THE CHAIRMAN: The point Mr. Whiteley was wanting to get cleared up was whether these statements do not really compare figures with respect to the independent retailers which have to do with the retail operations only, whereas the figures with regard to the chain stores--operating costs--show the total amount for wholesale and retail, and therefore are not comparable. Mr. Whiteley would like to have that point cleared up.

MR. KEITH: Well, I do not know of any way in which I can break that down. And also, I do not know what percentage of their business on which they do their own distributing, or how that compares with the average independent retailer.

MR. FAVREAU: But surely if you add 12.6 per cent over and above the manufacturer's price---

MR. KEITH: That is right.

MR. FAVREAU: ---it might still leave you with a laid down cost which would be lower than the added 10 per cent to the wholesale price.

MR. KEITH: It might.

MR. FAVREAU: And it might not.

MR. KEITH: I don't know.

MR. FAVREAU: Because I think we were told that the average wholesaling function in chain stores was about 2 per cent.

MR. KEITH: I do not know how I can get any breakdown of those figures from the chains.

MR. WHITELEY: The only point I suggest is that if you are attempting to base your argument on the straight differences between these figures, then I do not think it is soundly based.

MR. KEITH: I am only saying that the retailer's overhead cost, the cost of running his store and paying his employees and paying for his light, taxes, keeping the place clean, and so on and so on, are, according to these figures, no higher and perhaps a little less than the chain operations.

THE CHAIRMAN: But the figures do not

prove that, conclusively, unless they are made on the same basis for the two different types of operations, and cover the same items.

MR. KEITH: I imagine that they do.

THE CHAIRMAN: If one percentage figure for cost covers wholesale and retail, and the other covers only retail, then they are not on the same basis. And, in addition, if in regard to the independent stores the percentage shown for cost does not include salaries for the working proprietor, there is still a greater variation.

MR. KEITH: But that is included in the profit, which I add in.

THE CHAIRMAN: But we are looking at the operating expenses.

MR. KEITH: That is right, plus profit. In both cases it would include the executive's take, out of the operation.

THE CHAIRMAN: But, at the moment on this page, we are referring simply to the operating expenses.

MR. KEITH: That is right. And, having finished that, I started in just to point out the profit--that there was a higher profit to the individual operation than to the chain operation, which your associate said was accounted for by the fact that the owner's salary was in that profit; whereas, the executive's expenses in the chain store

were in the operating cost.

THE CHAIRMAN: In order to get an exactly comparable figure, you would have to segregate the items as between the two different types of operations.

MR. KEITH: I thought they were the same figures. The headings looked the same to me in both items. I do not know if there is any valid distinction between wholesaling and retailing, anyway. Both figures add up to the 100 per cent of the article.

MR. WHITELEY: It is like a contract; you must read the fine print.

THE CHAIRMAN: I think that is about as far as we can explore that point, at the moment.

MR. KEITH: My contention was that there is no great saving in operating costs to be passed on to the customer.

Then, to continue with the brief:

The same situation prevails in the furniture field. In 1950 independent furniture stores operated in Canada with an overall operating expense of 18.35 per cent and in 1952 of 19.47 per cent while in 1951 the chain furniture stores had an overall operating expense amounting to 27.22 per cent of sales.

The same situation prevails in other lines.

In other words the claim that a chain type of operation reduces operating costs, which saving is in turn handed over or passed on to the consumer, is just not so. The operating cost of this type of set-up is higher, and there is no saving to pass on, from this factor, to the customer.

No, gentlemen, we repeat that on the basis of efficiency, sales and service the Independent Retail Merchant can and does compete successfully every day of the week with the larger operators.

What they cannot compete against - is the power of dollars, used as a bludgeon to destroy them one-by-one.

Not only do the vast resources of these financial giants enable them to absorb losses, but since they have numerous outlets, the loss in individual centers, or even in whole provinces, can be buried in an overall profit. And like the small countries of Europe and Asia, when the big ones start to move, the small merchants can be destroyed one-by-one, having little or no means of presenting a united or co-ordinated front.

Every individual is a consumer. The grocer is a consumer for the appliance supplier and vice versa. Perhaps it is for this reason

that they are all interested in serving the consumer's best interest, since they are their own. Conversely that is why large trading organizations have no interest in this angle, as they are not consumers. It is, therefore, all the more important to question their propaganda when they hold themselves out as champions of the consumer, and as being opposed to fair-trade practice legislation on the ground that it is detrimental to the interests of consumers.

These organizations are as interested in the consumers welfare as the wolf is in the health and welfare of the sheep.

Anti-loss-leader legislation would not be detrimental in any way to the consumers' interest. From the long range viewpoint, real bargains come to the consuming public only through new inventions, better methods of production and distribution, mass production and the other factors which enter into the cost of manufacture and distribution of goods. It stands to reason that by reducing these alone can we reduce the cost to the consumer. Tricks, give-aways, loss-leading and similar devices do not, and cannot, affect the basic cost of manufacture, packaging, transportation and distribution. Real

Real technological advances and inventions are the only way of reducing costs in the long run. Give-aways, loss-leaders and tricks at best bring temporary bargains to a relatively few people in widely separated areas. Furthermore, they do it at the expense of other retailers, and if continued and used as a weapon of economic warfare, to their ultimate elimination and destruction. Not only that, but country customers, located far from the centers where these devices are being used, get no benefit from them at all, and pay out of line with fellow Canadians for the same articles.

There is one point which has been discussed on a number of occasions and that is the question of who, or what types of merchandisers, are responsible for "loss-leader" selling. Numbers of charges and counter-charges and denials have been made.

We do not think that it matters a great deal who starts it or where. The important thing is how to get it stopped once it breaks out.

In the July 31st issue of the Saturday Evening Post there appeared a short poem entitled "Canine Chorus":

At night, when a
neighborhood canine
Starts barking, I note with
chagrin
That often, with little delay,
nine
Or ten of his fellows join in.

The number of barkers keeps
growing
Till dogs are complaining for
squares,
With only the first barker
knowing
What started this state of
affairs.

And when the first dog should
be finished,
When cause for alarm
disappears,
His barking goes on
undiminished,
Because of the barking he
hears.

In order to reach a practical conclusion,
I am submitting for your consideration a
draft amendment to the Criminal Code of Canada,

which has the effect of outlawing the practice of loss-leader selling. If this practice is not being carried on in Canada today (as some people who have appeared before you have alleged) then no harm will result from its enactment, since there would be no infringement of it. On the other hand, it would be, at the very least, insurance against the possibility of harm in the future.

The views of the independent Retail Merchants of Canada on this subject are very clear and definite. They are unitedly and unalterably opposed to it, and they have asked me to express their view in the strongest possible terms. In their opinion, if loss-leader selling is permitted it will grow and spread across Canada and it will mean the end of merchandising as we now know it.

Your decision on this matter will determine whether or not our present system, based on private ownership and on the individual efforts of individual, independent marchants, is obsolete and is to be discarded.

If this is the conclusion which is arrived at, then the legitimate operator

of a retail outlet should be informed as quickly as possible so that he can take steps to get out of the field. If the battle is to be waged between the tycoons and financial giants unchecked and uncontrolled, then the sooner the small merchant knows about it the quicker he can govern his course away from the battle front.

It is our belief that the people of Canada do not want this situation to develop. It is also our opinion that in the long run the consumer would suffer from it. But we insist that we should be realistic and face the facts as they are.

The answer, gentlemen, rests with you.

I have drawn up a suggested amendment which is attached to the end of the brief. I am particularly conscious that it does not entirely cover the situation as it should. I am referring particularly to the fact which has been brought out in some briefs previously, that there are certain staple items of food which have a rapid turnover, and which almost stand in categories of their own, in that they are sold apparently at a reduced mark-up which, apparently at least, is below the cost of doing business, by both independent and chain stores. Those are items such as sugar, eggs

in season, butter, shortening and coffee, and possibly bread. These are items which turn over daily in the stores and which, by tradition I would say, bear a low mark-up.

Now, I think that possibly the amendment--that there should be an addition to subparagraph (c) in defining the cost. Perhaps I should read the suggested definition. This is by way of a substitution for the present section 498 (C) of the Criminal Code of Canada, and it is as follows:

1. Definitions:-

- (a) Loss leader selling means the practice of selling or offering for sale any article or articles, product or products below cost.
- (b) A practice of loss leader selling shall be presumed where there is proof of two or more instances of sales of an article or articles, product or products below cost by any distributor or vendor.
- (c) Cost means the manufacturer's lowest selling list price of any article or product to the trade,---

That means that if one of the large chains can buy at a reduced price, because of volume, then they should have the benefit of that in estimating their cost. We are not asking any elimination of competition on the basis of mass buying, or special buying, or anything like that. The legitimate price that a person or an organization is buying at should be taken, the lowest cost that he can show that that article can and is being bought for by himself, or if you wish, by others.

THE CHAIRMAN: The word "list" in paragraph (c) might lead to a different interpretation, Mr. Keith, might it not?

MR. KEITH: Well, perhaps it could. I do not think there is any significance in it.

THE CHAIRMAN: When you refer to the "lowest selling list price" you are referring to the suggestion that a chain store buying at less than that would be something below the list price.

MR. KEITH: The invoice price--it does not have to be "list".

THE CHAIRMAN: You say it does not have to be "list"?

MR. KEITH: "The lowest selling invoice price of any article or product"--that would be all right.

THE CHAIRMAN: In effect, it would mean

below the acquisition price.

MR. KEITH: Or the replacement price, or it might be the price to somebody else who is getting a special discount. If "A" can buy at less than "B", and he can go to court and show that "B" bought at this price, then he is certainly entitled to put that in, in a case of this kind--in a prosecution of this kind--as the lowest cost, regardless of whom it is to. It does not have to be to him.

MR. FAVREAU: You would, then, allow loss leaders for the purposes of competition?

MR. KEITH: No, we are here defining the cost of the article, as the lowest selling price of that article.

MR. FAVREAU: Yes.

MR. KEITH: We say:

(c) Cost means the manufacturer's lowest selling list price of any article or product to the trade, plus taxes and transportation charges, plus the distributor's or vendor's cost of doing business. In the absence of proof of the cost of doing business such cost shall be prima facie the lowest operating cost shown by the Dominion Bureau of

Statistics' most recent report for the type or classification of trade involved.

And then I was going to suggest there this addition:

And, in the case of staple food articles or products which have a rapid turnover, such as coffee, sugar, eggs in season, butter, shortening and bread, which traditionally carry a low mark-up recognized by the trade.

I think these items have been set forth in other briefs, and they constitute what are known really as staple food articles, and really occupy a unique position of their own. They have no application in the hardware field, or the appliances field, or the furniture field or the drug field; and they have really no application, in one sense, to the rest of the grocery business, either.

The point that struck me--and I suppose, not being a merchandiser or a retailer it would stand out, so far as I am concerned--the point that struck me is that actually a dollar invested in one of these articles like, let us say, a bottle of milk--20 cents for a bottle of milk; and let us say it is sold for 22 cents. You

reinvest that 20 cents next day, and sell it for 22 cents again. You get two cents off that 20 cents six days of the week. You make 12 cents on that investment of that 20 cents. That is something that you could not do in any other case, except milk or bread or sugar, or that type of thing that is demanded daily, and in which there is almost a daily turnover.

So it is not really a question of that article not bringing a return in dollars and cents for the money invested in it, to the retailer. It does bring it in. But, traditionally, the mark-up on those items is a cent, or something like that--a very small percentage--and considerably below all the other items in the store which, ordinarily, carry higher mark-ups. And I think that some reference would have to be made to these items to except them from this definition.

The prima facie operating cost should be that shown by the Dominion Bureau of Statistics, except in the case of staple food articles or products which have rapid turnover, such as coffee, sugar, eggs in season, butter, shortening and bread, all of which traditionally carry a mark-up which is recognized by the trade.

And then that mark-up would be the mark-up. And I think in cases of those articles it is the recognized mark-up that prevails in each

district, at any given time. It may fluctuate. But the amount that is charged on a loaf of bread--the mark-up--is pretty standard. The amount on a bottle of milk is pretty standard, and on a pound of sugar it is also pretty standard--and quite low. So I am suggesting that this be incorporated, or something of that nature.

Then, the remainder of the brief is as follows:

2. It shall be an offence punishable on summary conviction for any distributor or vendor of merchandise or trade articles or products to distribute, sell or advertise for sale any article or articles, product or products as loss leaders.
3. Any person, firm or organization found guilty of loss leader selling shall incur a penalty of not less than \$100.00 and not more than \$1,000.00 for a first offence and not less than \$500.00 or more than \$2,000.00 for a second and not less than \$1,000 or more than \$3,000.00 for third and subsequent convictions.

Now, if there are any questions I shall be pleased to answer them. As you know, I am not

a retailer, but I have done a little reading on the subject. However, that does not make me an expert, by a long shot.

THE CHAIRMAN: On the face of it, your proposed amendment does not seem to make any provision for distress selling, or end-of-the-season clearances, or the disposition of perishable goods, and all that sort of thing. You would want to make some provision for that, would you not?

MR. KEITH: Except that it was thought there would have to be more than two instances of it.

THE CHAIRMAN: Two sales?

MR. KEITH: Yes. I would think that if there was a clearance at the end of the season, that would be that. That obviously does not come into the picture at all.

THE CHAIRMAN: But what I want to get at is this, what do you mean by an "instance"? Do you mean one individual sale?

MR. KEITH: No, that would not be my idea.

THE CHAIRMAN: Or one advertised sale?

MR. KEITH: I think, before an offence could be presumed, that there would have to be a continuing practice on the part of that merchandiser to sell items at a loss, as loss leaders. In other words, a loss leader is not an individual sale or

a seasonal sale, or a sale of distress goods. It would have to be a practice that was definitely being carried on.

MR. FAVREAU: The same type of product must actually have been put on sale on at least two different occasions?

MR. KEITH: Yes, at least that.

THE CHAIRMAN: And would you require the instances--that is, the occasions--on which they were put on sale to have any duration? Would it be for an hour on one day, or something like that?

MR. KEITH: Oh, it should be an annual proposition. My feeling in all types of legislation, even in criminal legislation such as automobile violations, and that sort of thing--at the end of the year you should start off fresh again. I am very much opposed to this practice which is carried on by the pure foods division of the Department of National Health and Welfare. As I was walking down here I ran into the Minister, and we were talking about that very subject. Because he charged a druggist with a second offence when the first offence was committed over nine years ago. He is still charged with a second offence, according to that Act. I think that is a terrible thing.

THE CHAIRMAN: That would not be much

of a practice in retailing.

MR. KEITH: No. I think we are all agreed that it is the practice of carrying this on. No, an individual instance of a clearing off of goods, or damaged goods, or anything of that nature--that should not enter into the picture at all.

THE CHAIRMAN: You would want your legislation to be quite clear on that.

MR. KEITH: Yes, definitely. Anybody who can get a special price or a special buy on any article--why, heavens above, he is entitled to take advantage of that. I do not see why he should be asked to share that with his competitors.

THE CHAIRMAN: That brings up a point Mr. Favreau was trying to get at--but I do not think you quite got the point he was making. That is, where one merchant, we will say--a chain store, perhaps--gets a special price from the manufacturer, and then the other retailers, who are competitors of that chain store, would be entitled to act as if they had got the same price, is that right?

MR. KEITH: Yes, quite. If they were charged under this legislation, and said, "Look here, you bought this article for \$1.00, and you sold it for 98 cents. You have sold it at a loss"--if he can turn around and show that the

Dominion Store bought that article at 95 cents, then he has a perfect defence to the action.

THE CHAIRMAN: That is what Mr. Favreau meant when he said that you would allow--I believe he called it loss leaders--but you would allow sales at a loss, for competitive purposes?

MR. GILBERT: Yes.

MR. KEITH: If the original person had sold it at a loss, yes.

THE CHAIRMAN: Under those circumstances.

MR. KEITH: A loss to him, yes--quite. Otherwise you are eliminating the competition. We do not want to do that.

MR. FAVREAU: We agree on that. I was just querying or questioning whether you would admit it.

MR. KEITH: Yes, quite. He would certainly be entitled to that, as a defence. That was the purpose of the wording of this--to give anybody a chance--if he was brought up--first of all, to prove that he could operate his business at a lower cost than the next person. Leave it open to him to do so, to the satisfaction of the manager. Give him all the advantage he can get out of that. If he can show that he bought cheaper than somebody else, then let him take advantage of it. Or, if he can show that the other fellow bought cheaper than he did, then let him use that as an answer to it, as well.

It would have to be the lowest cost as sold by that manufacturer to anybody. The point I wish to make is that the defence is there to the person who is charged, and he is free to bring in his defence. If you put the shoe on the other foot and said that the prosecutor had to go out and find out all these costs himself, you would never make it work--if you put the onus on the prosecution to do that.

THE CHAIRMAN: Your proposal shifts the onus from the place in which it normally stands in criminal prosecutions?

MR. KEITH: But it gives the person who is in a position to bring his costs and figures before the court a perfect right to do so. It is a complete defence.

MR. FAVREAU: I suppose you could change your section 1 (a) by substituting the words "below the lowest available cost" for the words "below cost".

MR. KEITH: I have struck out in my copy the word "list" and put in the word "invoice". I do not suppose the word is too important. I think if you said "invoice price" then he would have to bring along an invoice showing the price he had from the wholesaler, and that would be his proof of the price.

THE CHAIRMAN: Just leave out the word

"list", so far as that is concerned. Then, do you wish to add anything by way of comment in respect of the brief itself, before counsel proceeds to question you? I think counsel will wish to ask some questions.

MR. KEITH: No, I have nothing to add.

THE CHAIRMAN: Perhaps Mr. Gilbert or Mr. Rands might wish to make some comment?

MR. KEITH: No. It is embarrassing to admit it, but I think I got all my ideas from them.

THE CHAIRMAN: It is still possible that they might wish to add something.

MR. GILBERT: I have nothing to add. Mr. Keith has covered our thinking precisely, thoroughly and completely. We have nothing further to add.

THE CHAIRMAN: Then, this might be a convenient point to take a short intermission.

---Recess

--Upon resuming

THE CHAIRMAN: You may proceed, Mr. Wickwire.

MR. WICKWIRE: Mr. Keith, your brief this morning was presented, as I understand it, on behalf of the Retail Merchants Association of Canada?

MR. KEITH: Yes.

MR. WICKWIRE: And that is the parent body of all retail merchants associations, is it?

MR. KEITH: Yes, it is made up of the various provincial retail merchants associations which support and maintain it and which, in turn, are broken down in the provinces into trade sections. That is, they each have a hardware section, and an electrical appliances section, and a food section, and a furniture section, and a clothing section. There are possibly one or two exceptions. I will ask Mr. Gilbert about that.

MR. GILBERT: Saskatchewan are incorporated as the Retail Merchants Association of Canada (Saskatchewan); but they are not affiliated at the moment with the national office.

MR. KEITH: I understand that is not so in Saskatchewan. They have an incorporation of their own called the Retail Merchants Association of Canada (Saskatchewan) Inc. And they are not affiliated with the Retail Merchants Association of Canada.

MR. WICKWIRE: They are not; that is the point I wish to make.

MR. GILBERT: Yes, they are not, at the present time.

THE CHAIRMAN: Do you mean they are completely separate and distinct from the

organization for whom you are speaking?

MR. GILBERT: Since 1950 they have not been affiliated with the national office of the Retail Merchants Association of Canada.

MR. FAVREAU: Do you mean that if there is a national convention they do not participate in it as a member of the association?

MR. GILBERT: That is right.

THE CHAIRMAN: Then, they are completely separate and distinct?

MR. GILBERT: Since 1950, yes.

MR. WICKWIRE: But have you any individual merchants in Saskatchewan who are members of your organization, or do they all belong to the Saskatchewan organization?

MR. GILBERT: They belong to the Saskatchewan organization.

MR. WICKWIRE: So that the voice of the Retail Merchants Association of Canada does not include any voice from Saskatchewan?

MR. GILBERT: That is right.

MR. WICKWIRE: On page one of your brief you have said that the big fellows are trying to gobble up the little fellows. Do you know of any instances where that has occurred?

MR. KEITH: No, other than that, as I say, that is generally so--that they move into a territory where it is already being served.

That is so of any expanding organizations. I am thinking of somewhat the same process perhaps going on in this field as, let us say, went on in the theatre business, when the movies got started. At that time two or three big organizations moved in and bought up the locations. Those that they could not buy, they just opened up next door, and it was not very long before they put them out of business. Then, eventually it got down to three competitors. Then it got down to two; and finally it got down to one organization which, in fact, controls the whole movie industry in Canada.

That is so, I think, in any field of endeavour. It is not confined to merchandising alone. They move in, and the only way it can be built up is at the expense of somebody who is already there on the ground and servicing that area.

I am not suggesting that there is anything improper about it, or immoral or illegal or anything of that nature. That is not my point. It is a natural evolution, and it is going on.

MR. WICKWIRE: I suppose the most recent evidence of it is in the motorcar industry.

MR. KEITH: Yes. That has become a very outstanding example in the last couple of years. Now, whether the public in the end benefits from that sort of thing or not, it is our opinion that

the public in the end does not benefit from it, and that the public benefits more from competition, small, medium and big, one with the other--provided that they are competing with each other on the basis of initiative and ingenuity and modernization and astuteness. Yes, then the public benefits. But if the big fellow, like as happened in the motion picture field, and in the automobile field, just gets a big club and beats his competitor out of existence--well, I do not think the public does benefit under those circumstances.

MR. WICKWIRE: Would you agree with the proposition that competition is the life of trade, although it may mean the death of some of the competitors?

MR. KEITH: Yes, absolutely.

MR. WICKWIRE: Then, on page two of your brief, you say:

"We can begin by saying that the organization employing loss-leader selling does so with the cold-blooded and practical purpose of gaining advantage for itself." Now, my question is that in gaining advantage for itself--that is, in making a profit--do not all retailers have the same objective?

MR. KEITH: Yes, and I think I say that in my brief--that they are exactly in the same

position as a man who is trying to buy a car and pay for a television set. Surely, he is in there to make a profit.

MR. WICKWIRE: And in gaining an advantage for themselves, or for himself, do not some retailers have lower mark-ups than others?

MR. KEITH: Yes, that is true.

MR. WICKWIRE: And by reason of the fact that they have lower mark-ups they can gain an equal or a greater advantage for themselves, or for himself?

MR. KEITH: That is right--and we would not want anything to eliminate that differential in mark-up. He is entitled to it. If one man wants to work 24 hours a day, and do things himself, and operate more efficiently and ends up at the end of the week with a little more money than the other fellow who plays golf three afternoons a week--that is his privilege, of course.

MR. WICKWIRE: That is one of the freedoms?

MR. KEITH: That is one of the freedoms, yes, that is right.

MR. WICKWIRE: In the same paragraph you suggest to the members of the Commission that they examine carefully and critically any arguments submitted to the Commission accompanied by or bolstered up by, or indicating any alleged desire

to be public benefactors. Has the Commission received such briefs or arguments; and, if so, would you care to enumerate them?

MR. KEITH: Oh, I think the suggestion has been made--in fact, I would suggest that the whole of Mr. MacAulay's brief on behalf of Safeway, while it was very cleverly worded, was entirely slanted for the purpose of creating the impression that this organization at least was bringing great benefits to the people of Canada in all sorts of ways, and that they were in business to see that the customer got the very most service at the very least possible cost.

MR. WICKWIRE: It was the Safeway brief you had in mind?

MR. KEITH: Yes.

MR. WICKWIRE: Any others?

MR. KEITH: I did not really go through the whole stack of them. I noticed the Safeway brief in particular, because it was so widely publicized in the newspaper columns and in the editorial columns of the press across Canada. I remember in Vancouver there were very many favourable comments about the wonderful work that this organization was doing, and that it should be preserved for the benefit of the country. I say they are entitled to live, the same as the independent retailers. Nobody is taking away

their right to carry on business, and nobody is going to quarrel with the method in which they carry on business. But I simply say that they are in business, the same as the independent retailer, for the profit and the living that they get out of it.

THE CHAIRMAN: I think we got the impression that they were not entirely altruistic.

MR. KEITH: Thank you, Mr. Chairman.

MR. WICKWIRE: My point is that there were no briefs other than the Safeway brief that you had in mind?

MR. KEITH: No, I would not have any others in mind.

MR. WICKWIRE: Then, at page three you state that your first task today is to make clear, on behalf of the Retail Merchants Association of Canada, that they are not in any way suggesting to this Commission or to the Government that legislation be drafted to eliminate or to reduce any of the advantages which derive from initiative, ingenuity, astuteness, and so on. I take it from that that your organization is not in favour of resale price maintenance, as such?

MR. KEITH: No, and I might say that we have probably received considerable encouragement to the opposite view from various sources. But we have not fallen in line with it.

MR. WICKWIRE: Some briefs have been presented, and some very strong arguments have been made, that the solution to this whole problem is the restoration of resale price maintenance. Your organization would not agree with that?

MR. KEITH: No, that is not our approach to the problem. We are retailers, primarily and throughout, and our desire, as all proper retailers, should be to bring goods at as low as possible a figure to the public as we can get them; and to have manufacturers dictate our prices--and our policies--well, we do not agree with that.

MR. WICKWIRE: And that applies to your whole association, not to just a particular department of it? It does not apply only to the food field?

MR. KEITH: No, I do not think there is any distinction.

MR. WICKWIRE: Then, also at page three you say that your members resent the implications that have been made by several who appeared before the Commission, that chain stores are the sole defenders, protectors and guarantors of freedom in competition in Canada. Again, does that apply only to the Safeway brief, or are there others you have in mind?

MR. KEITH: Well, sir, it is a very difficult thing. I realize that I should probably

have read all your 24 volumes of reports. But since they did not arrive in my office until just before I left for Ottawa---

MR. WICKWIRE: Perhaps you did not request them?

MR. KEITH: Perhaps I did not think they would be available. I never thought that I would receive them. I was certainly very pleased to get them. But I am afraid that a good part of our reading and thinking has come from newspaper comments and editorials, articles and features, of which we have many hundreds. As this Commission travelled across Canada we had a very full clipping service in each province, and they shot these things to us. I realize that many of the comments, as often happens in newspapers, perhaps got away on the wrong foot, or on a different foot from what was actually said before the Commission.

But there is no doubt about it that the newspapers reflected in their articles--as you probably know--a definite reaction toward the evidence of the various people who appeared before this Commission. And that impression, derived from many sources, was to the effect--as one would gather from reading these articles--that there were certain interests who had only in mind cutting down the price to the consumer; whereas, apparently, there were other interests--by

implication at least, although not said; the independent retailers--who seemed to have only one idea, that of pushing the costs up as high as they could get them, so that they would make more money for themselves.

It was that impression, which is general across the country, that I wished to counteract--namely, that the retailer is not in favour of resale price maintenance; and he is interested in competition. He believes in it, and he wants it, and he is willing to compete with anybody and everybody, provided it is on a fair basis.

That is my purpose in this brief; and, very largely, that was the reason I came here today--to make the views of our members known to this Commission. We believe in competition, and we want it.

THE CHAIRMAN: In running over the lists of divisions, I was not certain if there was a drug division.

MR. KEITH: No, the druggists have their own. They always did operate their own association. What is it called, Mr. Gilbert?

MR. GILBERT: The Pharmaceutical Association.

THE CHAIRMAN: I know that they had an association; I had forgotten whether you included

a drug division.

MR. KEITH: No, I think they operate entirely on their own. It is really a professional society, more than a trade association.

MR. WICKWIRE: Then, on page 3--the same page--you state:

"It is not the desire of the Retail Merchants to eliminate competition, or to take away the advantages of initiative, modernization or large scale buying. But the independent retail merchant does object to loss-leader selling, which is a totally different thing."

Will you distinguish a price reduction to a consumer due to initiative, modernization or large scale buying and a price reduction to a consumer that arises by way of a leader--a loss leader?

MR. KEITH: Well, the distinction is that the one is obviously bound to be temporary, whereas the other would be a permanent reduction. That is the only way in which merchandise is permanently and effectively reduced to the consumer--by eliminating waste, and by getting new methods of distribution, and new ideas into merchandising, which effect savings. Whereas, the loss leader--simply cutting a thing below the cost that was paid for it--obviously is only a

temporary device, a local device. Because even a multi-million dollar corporation could not go on selling at a loss, indefinitely.

MR. WICKWIRE: I suppose a lot depends on intent, too?

MR. KEITH: I think the whole thing depends upon intent. It depends entirely on intent. But I hesitated to say that in the beginning here, because of the difficulty of proving intent. I think anyone who has tried to prosecute under the Criminal Code realizes that those sections which involve intent are almost impossible effectively to administer. And I have tried to get away from that in the suggestion I made here. But that does not mean to say that the essence of this offence is not intent--because it is.

MR. WICKWIRE: In the very next paragraph you say that the ultimate purpose of loss leader selling is to eliminate competition. I suggest to you that that might not always be the case, that one of the purposes might be to sell more goods in that particular outlet.

MR. KEITH: I cannot see the logic in that argument. I am sorry, but it just does not add up, to me. It is like the Jewish gentleman who said that he lost a cent on every pound he sold, and that the only way he managed to keep in

business was that he said he sold so many pounds.
It does not make sense.

MR. WICKWIRE: It depends upon what
the cost is, of course, does it not?

MR. KEITH: Oh, yes.

MR. WICKWIRE: To the person offering
the leader?

MR. KEITH: Yes; if it is not a loss to
him, then it is not a loss leader.

THE CHAIRMAN: But, Mr. Keith, is it
not possible that a merchant might offer certain
selected articles at prices, and publish them,
even below the price he paid for them--so that
there is no question as to their being loss
leaders--in the hope, and perhaps with the result,
that a good many people would come into the
store, drawn by his advertising of these things,
and in addition to buying some quantities of
these specially low priced articles, would buy
quite a lot of other things; and the increased
sales in the other articles, even though their
prices are not raised,--the increased sales of
those other articles might more than compensate
for the loss on the specially selected articles
which are being sold as loss leaders? Might
he not gain, on the total, through increased
sales, and might that not be his objective,
rather than that of eliminating other people's
competition?

MR. KEITH: He might gain in sales; but he only gains in sales by the elimination of the other man who is selling. And I believe it was a gentleman who appeared before this Commission in Vancouver, Mr. Wosk, who had taken these articles to which I referred--a General Electric iron and kettle, and so on--and had cut the price down to below cost, and sold them.

In that case apparently it ended up by everybody else pulling those articles out in British Columbia. They stopped selling them altogether, because they would not sell them. The net result was that undoubtedly Mr. Wosk must have got a greatly increased amount of business, since he was opening three or four or five outlets--I am told it was four. But, coupled with that is the amazing thing that his cost of doing business was, I believe, over three per cent higher than the average for that same type of operation elsewhere in Canada.

So that the only conclusion one can come to is that the consumers coming into his store must have been paying more for other articles that they were getting. Because Mr. Wosk has got to get his cost of operation out of it. If he had reduced his cost of operation, if he could reduce his cost, by his method of selling, and so on, if he could reduce his

overall cost, then I would say that the consumer was getting a definite benefit, yes. But obviously, when his cost was higher than that of anybody else, the consumer must be paying for those costs. And that is all the more so when he is selling more items without any profit at all and at an actual loss. He is obviously adding those costs on to other articles which the consumer is led to, by one means or another. And I do not think that the general public gains by that sort of thing.

MR. WICKWIRE: Is it your view that the so-called loss leaders exercise their effect by deceiving consumers into believing that other items are sold at similarly low mark-ups?

MR. KEITH: Well, I think that is one of the purposes. I do not know that it operates as effectively as might appear at first glance. But it does definitely bring people into that store. And, having got into the store, their tendency then is to buy other articles. These are articles either that they need, or that they see there. We had a very good example of that in the case of cigarettes that the chain stores put on at prices below what the average merchant can buy them for. And all kinds of people who never bought cigarettes in a chain store in their lives--because they were sold in very small quantities, perhaps--went to that chain store. And

I do not doubt that as a result of that, they sold a lot of other merchandise, and those sales might have offset their loss. But it certainly did take people into that store who did not go there before.

MR. WICKWIRE: But my question was this, is it your view that a customer who, as you say, is brought into the store or taken into the store by reading an advertisement of a loss leader, is deceived into thinking that there are similar cuts in merchandise throughout the store?

MR. KEITH: I think that would be a general impression. But I doubt, if you tackled any particular individual, and put that question to him, or to her, he or she would admit that there had been any deception, that they had been deceived.

MR. WICKWIRE: That is not the view of the consumers organization, the Canadian Association of Consumers.

MR. KEITH: Oh, I think a certain number are. I think some do not think about it at all. And probably a certain number are not-- definitely not. But, the sum and substance of it is that they go into that store for that reason.

MR. WICKWIRE: I am reading from page 1739, Volume 10 of the evidence, from a brief presented by the Canadian Association of Consumers

of Montreal. The question was this:

"Are consumers misled when prices on particular items are reduced in one store below the prices of other stores into believing that all articles in the first store are similarly reduced?"

And the answer was:

"We do not believe so. We have seen the suggestion in some of the answers to the Commission's inquiry of last year that consumers are deceived by sharp price cuts on one item into believing all other goods in the stores are equally reduced in price. We are obliged to question the logic of such thinking. It is hardly complimentary to the intelligence of the average customer. When a retailer gets a bargain on one item of a manufacturer's stock does he believe all that stock is also going at reduced prices? If the average consumer were not keenly aware of actual values and prices how would a loss leader item lure them, and where would be the incentive in price competition between merchants?"

That is the view of the consumers organization.

MR. KEITH: It sounds reasonable.

MR. WICKWIRE: Then, at page 4, Mr. Keith, of your brief--the fourth paragraph about the middle,

you say:

The mere fact that instances of loss leader selling have been negligible right from the time that this Commission was being considered and set up, and ever since it has been sitting, does not mean that there has been a change of heart or of tactics on the part of some of the chain, department, mail order or discount organizations operating in Canada.

I find it hard to reconcile that statement with the statement contained on the first page of your brief, where you say:

There is no doubt that there is an economic war in progress in the grocery, drug, hardware and appliance fields in Canada. No amount of defining, smokescreening and straw-man punching can alter this fact.

Now, can you reconcile those two statements?

MR. KEITH: Yes, I think there has been a definite falling off in this practice in the last few months. And I furthermore think that if this Commission had not been in process of being set up and getting started to hold inquiries, that we would have had many, many more examples of it in the past six or eight months than we have had.

I think, furthermore, that we are going to find it in the future, very definitely, unless

legislation is put in to deal with the situation. I think that we are having a kind of lull in it right here in Canada at the moment. But the war has certainly broken out in full force down in the United States. Many of these organizations are the parent organizations of those which are operating in Canada. They are going to move their methods and their policies and their programs right into Canada as soon as the time is propitious. And they are sort of saving all their breath at the present time for a fight that is coming. I think we are going to have a real merchandising war in Canada in the next two years.

MR. WICKWIRE: You have introduced the subject of a war, as you call it, to the south--presumably you mean in the United States?

MR. KEITH: Yes, that is right.

MR. WICKWIRE: Do you know about the fair trade laws in 45 of the states of the United States?

MR. KEITH: Yes.

MR. WICKWIRE: And laws requiring minimum mark-ups in 31 of the states?

MR. KEITH: Yes.

MR. WICKWIRE: And the prosecutions that have gone on in order to endeavour to enforce fair trade?

MR. KEITH: Yes.

MR. WICKWIRE: Now, how do you stop the war in the United States, with all those levers?

MR. KEITH: I do not think you can stop the war. That is what I said at the beginning. The war is going to go on. All we are concerned with is that the position of the independent merchant--that he be allowed to continue in business, and not be subjected to unfairness of great wealth, as represented by these big companies, being able to put him out of business and take over the stand that he has had.

Now, the chief instrument of this being done is, I think, the loss leader.

MR. WICKWIRE: But that same condition pertains in the United States, I understand, with all this protective legislation.

MR. KEITH: Yes--and about 99 per cent of it is totally ineffective because it will not operate. It cannot be made to operate.

MR. WICKWIRE: And there has been a great growth in discount houses?

MR. KEITH: Tremendous, yes. It may well be that we are entering an era of totally different methods of merchandising--I don't know. It may be that people do not want personalized service. It may be they want to go in and take something off the shelf, or have it shipped direct to them from

a wholesale house, and if the darned thing won't work, they have no comeback; or if it operates back-end-foremost, they do not want any service on it--I don't know. But I do not think so. I do not think you will ever eliminate the personal service that the independent merchant can give.

MR. WICKWIRE: My point is that it has been suggested to me that the minimum mark-up legislation in the United States is pretty much the same as that which you propose to this Commission. And, in spite of that, apparently this war, this battle, goes on. So I do not suppose you, or your organization, would want to propose something that is not going to work?

MR. KEITH: No, that is not our idea.

MR. WICKWIRE: Or have you considered that aspect of it at all?

MR. KEITH: We thought that this suggestion would be as practical as we could make it. It is pretty hard to foretell in advance how anything will work out in practice. But it is quite obvious that a good many of these price maintenance laws in the United States do not work--at least, they do not work in a way to protect the individual who can be trampled under by price cutting.

MR. WICKWIRE: And also, very expensive to enforce?

MR. KEITH: Yes, very expensive to enforce. I would think they would be, yes.

MR. WICKWIRE: Now, at page six of your brief you selected a quotation out of what has been called the Green Book, material collected by the Director of Investigation and Research, and you refer to page 25, which contains a group of replies received by the Director on the question of the effect of loss leader selling of products used for this purpose. The one you have cited is as follows:

Such a loss leader practice may result in the loss of goodwill for the product by the retail trade and eventually the consumer may find it difficult or impossible to purchase the bread in a large number of retail outlets.

MR. KEITH: Yes.

MR. WICKWIRE: I would call your attention to the one immediately before that, on the same page, which is as follows:

I think that a good case can be made for the fact that the product may be damaged if it is sold under cost over a period of time. I do not think that such a product, if it is strongly advertised, will be damaged if it is sold at a low mark-up.

Now, I am just suggesting to you that you picked

out one of fourteen replies to that particular answer which really does not give you a cross-section of the whole industry on the subject.

MR. KEITH: I was not attempting to take over your job, Mr. Wickwire. I was going to be fairly content if I could cover the viewpoint of the retail merchant and leave the Commission and yourself to worry about the other angles.

But I do happen to know something about this bread situation, because we did have a bread war in Winnipeg, which was precipitated by the same Safeway organization to which I have previously referred. They brought out a bread and put it on sale at a price which was below what the retail merchants had to pay for it from the other bread companies. The net result was that they--and it was under my auspices, and Mr. Gilbert--called together with some trepidation the presidents and managers of the various bakeries in Winnipeg. And, because we were afraid of Mr. Smith and his anti-combines club, we did not want anybody to think that we were combining in prices, we protected ourselves by having one of these little recording machines that I see here, in the office. So that we had definite proof, if necessary, of what was said. And the retail merchants were there, the

individual retail merchants. And I should perhaps say that in Winnipeg home deliveries have practically been eliminated altogether, and that these bakeries deliver direct. They deliver direct to the stores, and you buy the bread in the store.

MR. WICKWIRE: Do you know what the cost of delivery of a loaf of bread is?

MR. KEITH: I was not very much concerned about that. That is the problem for the bakeries. I am dealing with the problem of the retail merchants. And the retail merchants simply said to these bread manufacturers, "you have got to give us a loaf of bread that will sell for the same price as Safeway." And the bread manufacturers came back--they all came back--and they said, "We cannot make a loaf of bread at that price." The retail merchants said, "Well, that is your problem. We are not bakers. You have been in the business for 40 or 50 years, and if you cannot make a loaf of bread to compete with Safeway bread, then take your bread out of our stores. We will use our space on the shelves to sell something else that we can sell." Because there was a great deal of ill-will created for the individual merchants. His customer would come in and say, you are charging 30 cents for two loaves. You are a dog-gone robber. I can go

across the street and I can get that bread at Safeway for 26 cents. You are making four cents out of it." And there might be a line-up of people there in the store, and you would have to argue with this customer and try to assure her that you were not getting the four cents out of the loaf of bread.

MR. WICKWIRE: The bread question was very thoroughly discussed by the people concerned, in the bread industry, and I will refer you to their brief.

MR. KEITH: I am only telling you what happened in Winnipeg. Bread was put out of the stores, and legal action was taken against them for restraint of trade, for refusing to sell bread. There was a great to-do about it and then, finally, for some reason or another, the price was restored, and they went back.

But that is what can happen to a product. People could not buy bread in Winnipeg, because the retailers would not handle it and subject themselves to the charges that they were exorbitantly charging the customer, and that Safeway did this and did that. They said--and they all said the same thing--"We would rather not have bread in our stores and simply say that we are sorry, that we do not handle that product; you had better go over to Safeway and

get it." They found less criticism directed against them by that stand than they did when, as the public thought, they were trying to gouge the public for another three or four cents on a loaf of bread.

And the result is that there was a number of days in Winnipeg when you could hardly buy a loaf of bread.

Now, I know it must have been a very serious thing for the bread manufacturer. But that is what happened to his product.

That is one thing that this report of Mr. MacDonald points out can happen. And I know that it can happen to a product. It makes no difference to the retail merchant--he has only got a store there, and he has means of servicing the public, and he is selling his service to the public. That is all he is doing. If he can sell his service in one way or another way, he will do it whatever way he can. If he cannot service them in bread, then he has to give it up, and he will turn to something else--some other line of endeavour. But there is no other way that the retail merchant can tackle the problem.

MR. WICKWIRE: Your next quotation is taken from the Green Book at page 26, in which you quote:

The use of loss leader practice does tend to concentrate merchandising in fewer hands and it also tends to reduce the quality of goods available for the public by the simple process of destroying the only measure of quality.

I will call your attention to a quotation, also taken from the Green Book, in the paragraph immediately preceding that one, which is as follows:

All goods offered at less than regular mark-up are offered to the whole trade and therefore with respect to our goods the loss leader practice does not result in a concentration of merchandise in fewer hands.

And at page 27 another manufacturer reported:

As strongly, as definitely and as positively as I can say it, my feeling is that low-cost selling such as I have been discussing does not result in the concentration of merchandise in fewer hands.

I am only pointing this out to show that picking out one thing at random from the reports collected by Mr. MacDonald is not conclusive.

MR. KEITH: I wonder if you are making a distinction between low mark-up and loss leader selling there, though. There is quite a difference between them. I had a brief here that gave a very good example of that--the one provided by the General Electric Company. I cannot seem to lay my

hands on it right now. I think I made reference to this somewhere before. At page 16 of their brief they analyze what happened to them out in British Columbia, when this gentleman Mr. Wosk, whom I have not had the pleasure of meeting, decided to sell their iron, kettle and polisher as loss leaders.

MR. WICKWIRE: I am coming to that later on in the brief, as we come to it.

MR. KEITH: And you will see there that it ended up by Wosk being the only outlet they had in British Columbia who was selling that merchandise at all. And you say that loss leader selling does not tend to concentrate an article into the hands of one person? Well, there is an example of where the whole of British Columbia dropped that thing, and he was the only one in British Columbia who sold it.

MR. WHITELEY: I do not recall that it was exactly that way.

MR. KEITH: Well, there are the **figures**. I do not know whether they are right or wrong. I am just taking their figures as an example.

Furthermore, the total sales dropped, of course, in British Columbia. But the sales he put in were terrific. He sold more of these things, I think, than the whole of British Columbia had

sold in previous years. If that is not concentration in the hands of one person, then I don't know what it is.

THE CHAIRMAN: Do you mean he sold more than all the others had sold the previous year?

MR. KEITH: I think so.

THE CHAIRMAN: Then the sales hardly went down, did they?

MR. KEITH: Of course they had just been bringing these things out. And that was apparently their kick. I am not submitting their brief for them.

MR. WICKWIRE: The evidence was--and I heard it--that the sales in British Columbia were higher than they were in 1951, despite the price cut.

MR. KEITH: They have 1950, 1952 and 1953. And they say that assuming the first six months of 1950 at 100--"in relation to all of Canada our sales in Northern Saskatchewan in the period 1952: Polisher, 97; Kettle, 157; Feather-weight Iron, 135." And then, with Alberta, it is 123, 101 and 121. In British Columbia it dropped to 46 for the iron, 98 for the kettle and 51 for the polisher. The entire sale in British Columbia was all made through one outlet. They sold a tremendous volume no doubt in one outlet; but they had practically none at all

elsewhere. He sold practically the whole works; because, who else could sell at that price? I mean, I was just running over some of the facts of loss leader selling.

MR. WICKWIRE: But that was not the evidence of the General Electric Company before this Commission, Mr. Keith.

MR. KEITH: I am sorry, I am reading from the book. If I were taken to agree with the views expressed in this book--they have some very interesting figures--I would be very pleased to file it.

MR. WICKWIRE: May I inform you that the Commission also has figures from General Electric which, because of their position in the industry, must not be disclosed. But they are selling more appliances than they ever did.

MR. KEITH: In British Columbia?

MR. WICKWIRE: Overall.

MR. KEITH: Yes, but not of these items here?

MR. WICKWIRE: Your next quotation on page six of your brief is a quotation from the consumers association, taken from page 64 of the Green Book.

MR. KEITH: Yes.

MR. WICKWIRE: But I notice that you did not quote the first paragraph of what the

consumers association had to say, as it appears at page 63 of the Green Book. It is as follows:

The---

blank association---

---is not in a position to explore and assess the technical details involved in many justifiable forms of bargain selling. We can see numerous occasions in which the practice of selling below cost could be justified, and the definition of such situations concerns, we think, the retail trade, and not the consumer.

The same association has this to say about loss leaders, at page 1736 of the evidence:

"Loss leader" as a term to be applied merely to the willingness of a retailer to take a smaller profit in exchange for a large turnover represents to us a legitimate business practice offering legitimate advantages to consumers of which they should not be deprived.

Do you agree with that?

MR. KEITH: Yes.

MR. WICKWIRE: And they continue, from the evidence:

In this connection we feel that certain interpretations offered for the term "loss leader" should cause concern to those

interested in retaining a free competitive economy. An example we wish to quote is the interpretation of a "loss leader" presented by a retail voice in the answers to the questions posed last year by the Director of Investigation and Research of the Combines Investigation Act. We quote here only the final summary to save time. It says:

"In a broad sense a loss leader might be defined as the offering for sale by a merchant of goods at prices which do not encompass costs, plus a gross margin sufficient to cover efficient distribution in order that he may attract to a store customers who otherwise would not come. The offering might not be below costs, but the gross margin would be less than cost, plus a gross margin sufficient to cover costs of efficient distribution for that class of goods."

It seems to our association that such a definition--if accepted and made the subject of legislation--would establish a minimum sales price system as arbitrary as resale price maintenance at its worst.

Now, Mr. Keith, would you comment on that view of

the consumers association, because it seems to be in direct conflict with that advocated by you.

MR. KEITH: It is a very complicated statement.

MR. WICKWIRE: Well, they say that your definition of what a loss leader is, of cost plus taxes and distribution costs, which is precisely what you have advocated---

MR. KEITH: Yes. The lowest price that that article can be bought for, plus Government taxes on it, and transportation, and the lowest cost of doing business by that trade that is doing it, with the right of the individual to come in and show what his cost is--if it is lower. I do not see that that is in any way unfair to anybody. And I do not think it is fixing any prices. It allows the individual any benefit he can get by more efficient operation, and it allows him any benefit he can get by discount buying or large-scale buying. And those are the only two real factors that allow for any variation in the price of goods.

THE CHAIRMAN: Mr. Keith, under the heading of the cost of doing business, do you mean the average cost?

MR. KEITH: The lowest cost. The definition says, "The lowest cost in the trade."

THE CHAIRMAN: What I am getting at is this,

would you allow a distinction between a fast moving article on which the percentage cost might be, as you suggest yourself, a great deal less than on a slow moving article. Would it allow for a distinction there?

MR. KEITH: That is why I suggested that addition at the end with respect to these articles that are, I think, recognized articles. They are all staple food lines with a turnover almost daily. They have a very rapid turnover and, by tradition, they have a very low mark-up. Then, that mark-up, which is recognized, should be taken as the mark-up of those articles.

THE CHAIRMAN: There might be others.

MR. KEITH: There might be others, yes. We spent hours upon hours trying to figure them out. And I noticed the chain stores listed them, and some other briefs listed them, too. And we had listed them. And I have discussed it with these people, and they seem to be pretty stock items, when it comes to the trade.

THE CHAIRMAN: Do you include cigarettes as an item in that category?

MR. KEITH: I presume so, although the mark-up on cigarettes is quite sufficient to take it out of this category at the present time. They make a pretty fair mark-up on cigarettes, really.

THE CHAIRMAN: Even though they are selling at these lower prices. That is, they are not really loss leaders?

MR. KEITH: No, they are not, really. They have not been in that category in the sense that the mark-up charged on them, when you figure it out on the dollar basis, is a pretty fair return. That does not apply to these staple lines which turn over daily, such as bread, milk, sugar, eggs, butter and shortening. Those lines are really carried by all merchandisers, I take it, just as a service to the community and, looking at it from the standpoint of the consumer, as a necessity. That is a service to them. Looking at it from the retailer's point of view, it is a necessity. Because if you do not stock those items, and people have to buy them, it means that they have to go elsewhere to get them. So you practically have to carry them.

THE CHAIRMAN: Everybody leads with those articles?

MR. KEITH: Yes. And those articles all have standard prices--usually a cent, or something like that, on an article. That is the fixed mark-up. And it is practised in that trading area. There may be slight variations in different areas; but in that particular area it is the accepted fact that on a loaf of bread a retailer

makes a cent, or on milk he makes a cent, or whatever it is. It is not really a percentage at all.

It has got to be an article in that category that turns over rapidly, as the Chairman has said; I would say almost daily. Because these items are sold almost daily. And they are low-priced articles, usually. They are staple products. They are staple articles, staple products, that everybody uses and everybody buys. They are definitely, I think, recognized, so far as my inquiry into the field has gone--everybody seems to recognize them in the food department, anyway. And they are distinctive in food. I do not know any other trade that has those classes of articles.

MR. WICKWIRE: Mr. Keith, at page nine of your brief you set out comparisons of operating costs of your food chains as compared with the national average for the independent stores.

MR. KEITH: Yes.

MR. WICKWIRE: We had some discussion about that phase of the matter when we were listening to your brief.

MR. KEITH: Yes.

MR. WICKWIRE: If there has been some misconception in the reading and comparison of the figures---

MR. KEITH: I do not see--

MR. WICKWIRE: I am just saying "if there has been" and if the costs of the average independent store, including the salaries of the proprietors, bring the costs a bit over the chains, your suggestion contained in section 1 (c) of your new draft in substitution of 498 (C) is not going to help your people very much, is it?

MR. KEITH: No, it would be the other way around. If the loss leader practice had been carried on by the chains, it would be of advantage to them, in a defence that they could add in there two per cent more to their costs of doing business.

MR. WICKWIRE: If it turns out that the chain's cost is lower than the average independent's costs, should you not have a clause in there somewhere permitting the merchant to meet competition in good faith?

MR. KEITH: Well, I think that we have that in our suggestion, where you are allowed to use the lowest manufacturer's selling price, plus taxes and transportation, plus the lowest cost of doing business to the particular class of trade that it falls into.

MR. WICKWIRE: If you are happy that it is there, all right.

MR. KEITH: Oh, we are quite satisfied

with it. Because we want it to work the other way. If they cut prices, and the independent retailer has to cut his prices across the street, to meet them, he does not wish to be faced with prosecution, either. He wants to use figures, if he has to, to defend himself.

You have to have it both ways. But, frankly, this is a point that has been worrying me a little bit before. We are dealing here only with the cost of doing business. We are not dealing with the cost of the article. Whatever it costs the chain store to buy that article, if they can buy it cheaper from the wholesaler than the independent can buy it, or if it runs its own wholesale, and gets it cheaper through them, that has to do with the cost of the article. What I am dealing with in here is only the cost of service.

MR. WICKWIRE: The cost of doing business.

MR. KEITH: The cost of doing business, which means service. We are a service association. In our costs of doing business, we are prepared to compete with any chains on that basis, any time. And I think we do compete, and I think we compete successfully.

MR. WICKWIRE: You probably agree that perhaps a customer should be given his choice as to whether he wants to buy service---

MR. KEITH: That is right.

MR. WICKWIRE: ---or whether he wishes to buy an article from a dealer who does not give service?

MR. KEITH: That is right.

MR. WICKWIRE: And you think that he should have a freedom of choice?

MR. KEITH: Yes, absolutely. And we are not afraid of that freedom. We welcome it because we think, and our experience has shown, that we can compete successfully against that. Because there are a large number of people who want all sorts of service.

MR. WICKWIRE: There has been the suggestion from one or more who have appeared before this Commission that the customer should be forced to pay for salesmanship and service, whether he wants to or not. I am glad to hear that statement from you.

MR. KEITH: Salesmanship pays for itself, definitely. It is like advertising.

THE CHAIRMAN: You mean, if it is good salesmanship?

MR. KEITH: Yes, if it is good salesmanship or good advertising it carries its own weight. Otherwise you are out of business anyway. I do not think we expect people to pay for that. We have to take that out of our overhead.

THE CHAIRMAN: I see it is almost 12:30, and perhaps we should adjourn now until two o'clock.

MR. WICKWIRE: I have almost finished my examination, Mr. Chairman.

THE CHAIRMAN: Well, unless we adjourn now, we would not be back by two o'clock. The Commission may have two or three questions to ask. Perhaps we should adjourn now and continue after lunch.

MR. WICKWIRE: All right.

THE CHAIRMAN: It may take only a few minutes, but one can never be sure about that.

---Luncheon adjournment.

---Upon resuming at 2:00 p.m., Tuesday,
September 14, 1954.

THE CHAIRMAN: Mr. Wickwire, you may proceed with your examination of Mr. Keith.

MR. WICKWIRE: Mr. Keith, referring again to your proposal contained in the last page of your brief, section 1 (c), you say:

In the absence of proof of the cost of doing business such cost shall be prima facie the lowest operating cost shown by the Dominion Bureau of Statistics' most recent report for the type or classification of trade involved.

Now, I understand that the D.B.S. only show averages.

MR. KEITH: That is right.

MR. WICKWIRE: Now, how would it be possible, in the practical working out of your suggestion, to show the lowest? Do you mean the lowest average?

MR. KEITH: Yes, the lowest average, except for the exceptions which I mentioned on the staple articles which have abnormally low mark-ups, by tradition.

MR. WICKWIRE: They would be excepted; those articles would be excepted from your proposal?

MR. KEITH: Yes, quite.

THE CHAIRMAN: Would they be excepted entirely?

MR. KEITH: No. I think in that case that the traditional mark-up recognized by the trade would be taken. That was my suggestion-- "recognized by the trade"--and that that mark-up should be taken as the mark-up for that product.

THE CHAIRMAN: But anything below that would be regarded as a loss leader?

MR. KEITH: Yes, anything below that. It would be quite small, anyway.

THE CHAIRMAN: It would eliminate any reduction in price, though, with regard to those articles?

MR. KEITH: Well, not entirely. But probably practically it would, yes--in practice it would, very very closely.

MR. WICKWIRE: You must be thoroughly satisfied that there is, as you call it, a traditional mark-up on these items?

MR. KEITH: I am told so, and I gather that that is the case. I gather it from these previous briefs. Because they mention them specifically, as well.

They are exceptions; but I do not see really any way of dealing with them, except to except them.

Actually, of course, as I understand it-- and I think I tried to explain this before--the money invested in that type of thing, in these products, does not necessarily say that the retailer gets a low return for his money. Because they turn over every day. The retailer reinvests that money in similar lines for the next day, making his profit again. There are not too many lines with which you can do that sort of thing, except the staple lines that people buy every day and that are in everyday-use.

MR. WICKWIRE: Now, the D.B.S. averages, as shown in their printed reports, may I point out to you, are made up of a very wide range. There is a very wide range, in order to bring out the averages.

MR. KEITH: I understand so.

MR. WICKWIRE: But you would still be content to accept the D.B.S. average?

MR. KEITH: Oh, yes. Of course I think they are set forth in Volume 16, page 2897. It sets forth these same items Mr. MacAulay set forth--coffee, sugar, butter, shortening, bread and so on.

MR. WICKWIRE: Yes.

MR. KEITH: I realize that it is a rough and ready rule, in one sense; but, on the other hand, I think it could be made to work,

because of the essence of the thing being really a continued practice of this type of thing, which would bring prosecution.

MR. WICKWIRE: Would you or would you not include some clause about distress selling, and that sort of thing?

MR. KEITH: Well, I take it that distress selling would not probably arise in one commodity more than once a year, or perhaps, at the outside, twice. If a merchandiser got himself into the jackpot of having to dispose of distress items two or three times a year, I think he probably should be out of business, anyway.

MR. WICKWIRE: And should not be merchandising at all?

MR. KEITH: He should not be in the business. If he does that more than once, I think that would be a pretty good indication that he was doing it, not because it was distress goods, but because it was part of his regular program of operating in that way.

At any rate, that would be my thinking on the subject. I cannot conceive of a man or an organization getting itself into the same jackpot over and over again.

MR. WICKWIRE: Now, Mr. Keith, you are familiar with the brief presented before this

Commission by the Retail Merchants Association of Canada (Saskatchewan) Inc., which was presented by one Mr. Shelly?

MR. KEITH: Oh, yes, I have heard about it. I will not say that I am familiar with it, but I have heard about it.

MR. WICKWIRE: I believe your Mr. Rands, who is here today, was also present on that occasion, is that so?

MR. Rands: Yes, in Saskatoon--yes.

MR. WICKWIRE: And that, as stated, that brief was endorsed by the Dominion Board of the Retail Merchants Association of Canada, Inc.?

MR. Rands: That is correct.

MR. WICKWIRE: And that is your body?

MR. Rands: That is correct.

MR. WICKWIRE: On page 2313 of the evidence, as contained in Volume 12, I quote from the brief presented on that occasion:

We do not believe that in the food field, so called, price maintenance is either desirable or necessary. We do not believe that in the food field it is either desirable or necessary to provide legal floor prices by compelling pricing at not less than so much over cost. We believe that an adequate normal play of

honest price competition should be safeguarded.

That seems to be somewhat different, Mr. Keith, from the solution advocated by your group here today, does it not?

MR. KEITH: Well---

MR. WICKWIRE: In other words---

MR. KEITH: We are dealing with--of course, the first statement is a statement of our views, that we do not believe in price maintenance legislation.

MR. WICKWIRE: They do not believe in a floor.

MR. KEITH: They do not believe in---

MR. WICKWIRE: In a floor.

MR. KEITH: In floor prices at so much over cost. We do not believe in over-cost, either. We have a cost--that it would have to be sold below cost before it would be a loss leader. You would have to sell it below cost.

MR. WICKWIRE: But under the system advocated by you, there is a floor underneath the cost?

MR. KEITH: No, the cost is entirely what you can go out and buy an article for. If you can buy it cheap, then that is the cost.

THE CHAIRMAN: Your idea of cost is the price, plus?

MR. KEITH: Plus your cost of doing business.

THE CHAIRMAN: It is not just what you pay for it as a dealer, but it is what you pay for it, plus your cost of doing business?

MR. KEITH: Yes.

MR. WICKWIRE: Based on an average.

MR. KEITH: No.

THE CHAIRMAN: There is a distinction.

MR. KEITH: No, it is not based on an average. It is based on an average if the---

THE CHAIRMAN: If you cannot establish it?

MR. KEITH: No, no; if the defendant on a charge does not care to avail himself of bringing books and figures into court and showing what his cost is.

MR. FAVREAU: It would still be his average cost of doing business.

MR. KEITH: It would still be his average cost of doing business, yes.

MR. FAVREAU: It might not reflect his actual cost on that particular item?

MR. KEITH: It might not do that, I don't know. It is up to him to satisfy the magistrate as to what the cost is to him. And it is left open to him; and if he does not choose to give evidence on that subject, then the

section suggests that the dominion average be taken.

MR. WICKWIRE: The Saskatchewan people point out that the cost that they are talking about is the cost to a retailer.

MR. KEITH: I have not read it completely, but I think what they were taking was the wholesale cost, plus an arbitrary figure of 8 or 10 or 12 per cent, something like that, fixed on the wholesale cost, and making that a cost, which would be a fixed cost, then--an over-cost, pricing not less than so much over cost. But I am not trying to explain their brief.

THE CHAIRMAN: Mr. Keith, there is a distinction between the meaning of the word "cost" as you have used it, and as it is used in the Saskatchewan brief.

MR. KEITH: I think that is right.

THE CHAIRMAN: You mean price plus cost of doing business?

MR. KEITH: Yes.

THE CHAIRMAN: And they mean price.

MR. KEITH: Yes.

MR. WICKWIRE: Period?

MR. KEITH: Yes, period.

MR. WICKWIRE: Now, I take it that the parent body, which you represent, agreed on that

occasion with the Retail Merchants Association of Canada (Saskatchewan) in that submission? That was endorsed by them?

MR. KEITH: I was told that they were approached to endorse it, and that they did endorse it--having in mind at all times, however, that they would make their own final submission, which we are doing here today.

MR. WICKWIRE: My next question is this: Do they still endorse that submission of the Saskatchewan group?

MR. KEITH: The national foods division, I understand, still does, of the Retail Merchants Association.

MR. WICKWIRE: It seems to me that there is some contradiction between them?

MR. KEITH: I think so. I think there is some. I am told that the national foods division still endorses it. But, so far as the remainder of the Retail Merchants Association is concerned, this is the presentation which they intended to make at all times, and which they do make as such.

MR. WICKWIRE: Thank you; that is all.

MR. WHITELEY: In the discussion this morning you referred to the warfare in retailing going on in the United States. And then you suggested some of the organizations that were

active in the United States might be parent bodies of companies in Canada, and might establish branches in Canada. I was not clear in my mind in what sections of the retail trade of the United States you considered that this warfare was going on.

MR. KEITH: Oh, I think it is going on in the whole general merchandising field. It is not confined to any particular division. I think, for example, in these department stores and discount houses, that they are carrying on this price cutting competition very definitely at the present time, and that they will extend, and intend to extend that into Canada.

MR. WHITELEY: Some of the literature that has been brought to the attention of the Commission suggests that the discount houses are making it difficult for the department stores in the United States in certain fields.

MR. KEITH: That is right.

MR. WHITELEY: And that, obviously, two types of stores are carrying on the same type of retailing.

MR. KEITH: They are not carrying on the same method of retailing, but they are retailing the same articles of trade.

MR. WHITELEY: Another aspect which appears to be indicated by some reports from

the United States is that the discount houses are sort of an independent development starting, in many cases, from relatively small beginnings.

MR. KEITH: I think that is probably so. I think, offhand, that probably this chap Wosk in British Columbia was perhaps started off in a small way, and is branching out. But they are being met now by the retailing outlets adopting somewhat the same methods to compete in a large number of centres. A lot of the traditional department stores have apparently kicked over the traces and said, "O.K., if you want to fight, we will fight." And away they go. And they are starting to handle merchandise, at least in part of their establishments, in the same way as these discount houses are handling it.

MR. WHITELEY: Yes, but I have not seen any indication that they are developing what you might call chains of discount houses which would be in a position to establish branches in Canada.

MR. KEITH: I did not suggest that they were building any chains of discount houses. This practice of selling at below cost does not necessarily tie itself to the chain stores. I did not wish to give that impression in my presentation.

I did object to certain chain stores taking credit for things that I did not think they were legitimately entitled to take credit for. But I would not necessarily--as my little poem indicated--say who starts this thing, or who carries it on, or who finishes it. I do not think that is really important. I think Mr. MacAulay, in his brief, made the point that they never, never started these things. They always go and take a picture of somebody else who started it, or who they thought started it. That was enough for them to get into it.

I think, frankly, that, like the dog that starts barking, heaven only knows, or he is the only one who knows why he starts. But once he does start, they are all into it. And, after that, what difference does it make who started it?

MR. WHITELEY: No, but the inference I got from some of your evidence this morning was that there are large aggregations of capital engaging in this economic warfare, as you call it, in the United States.

MR. KEITH: I think there is. And I think there will be in Canada. I think we are going to see a real battle in our city of Winnipeg in the next couple of years between two of the big financial institutions of this country. I

think when Simpsons-Sears move in on the T. Eaton Company, who think the town belongs to them--I think there will be a regular fight. And in the process of that fight there are a lot of little people who are apt to get hurt, in between. And it may quite well be that these two big organizations--and I only use that as a possibility. They may not have in their minds destroying the little operators, at all. They may be thinking only of themselves. But, meantime, like the chicken that is standing around while the elephant is dancing, the chicken is likely to get trampled on.

All we are here for is to try to get the independent retailer to stay in business, if it is possible, and to point out that the independent retailer does give service to the community and to Canada as a whole, and in all kinds of areas across this country where the big organizations ^{probably} never will give service--and also, right next door to the big organizations. And they are doing it on a sound and economic basis. And they play an important part in our present system of distribution.

I suggest that the part they play is a most vital one, from all points of view. We are here simply to put forward their ideas, in the hope that they will be allowed fairly to

carry on their work, and will not be faced with a situation of loss leader selling which, frankly, the smaller merchants cannot compete with. It is just beyond their power to compete with it. If some big organization definitely starts out to make that a policy of its merchandising, then the small merchant is beat; he cannot compete against it.

THE CHAIRMAN: But, on the other hand, some of the stories of these concerns which are purportedly engaged in loss leading indicate that they began that practice when they were quite small, and that it is while they were carrying on these alleged practices that they grew big.

MR. KEITH: Sure.

THE CHAIRMAN: So it seems to me that the little fellow can compete sometimes by doing that sort of thing.

MR. KEITH: Well, I suggest that maybe an individual merchant can compete, but I don't see how the community can compete or benefit on that basis. It is not to the interests of the consumer and it is not to the interests of the people generally. Just because some fellow gets ahead of another fellow on a deal of that kind does not excuse or justify it.

THE CHAIRMAN: We are not discussing at the moment whether it is justified or not. It is just a question of whether the little

fellow can compete; and I say that in some circumstances apparently he seems to have been able to do so.

MR. KEITH: Surely. I quite agree that the little fellow can start a fight like this, just as quick and as fast as the big fellow. In fact, according to Mr. MacAulay, it is always the little fellow who starts it.

Of course, I do not think he needs much excuse sometimes. But Mr. MacAulay maintains--and probably he is right--that it is always some little fellow who starts it. I don't know. But my point is that I do not think it really matters who starts it.

MR. FAVREAU: In the case of a retailer who would be accused under your proposed section 498 (C), should he choose to rebut the presumption created by the fact that he has sold at less than his cost, plus the average cost of doing business as reported by the D.B.S. in similar enterprises, and try to establish that his actual costs are lower, how do you foresee the possibility of establishing such proof? Would you prove it by the average cost of doing business in this particular concern, this business concern or establishment, in the previous year?

MR. KEITH: I would think it would be the previous year's operations. He would take his expenses, show his light and taxes and rent and salaries, and show the volume of sales that

he had, and show what percentage of that volume his expenses were.

I do not think it would be too difficult. I think every retailer who is in business must do that, anyway--if he files an income tax return. I am pretty sure he would put in all his expenses. He knows what they are, and he knows what business he has done.

It is simply a very simple arithmetical computation to find out what percentage his expenses were. If he is doing business at lower than average--well, then, surely he should be entitled to use that in his defence.

MR. FAVREAU: I suppose it would be nearly impossible to identify the actual cost which attaches to the merchandising of one particular article in a store?

MR. KEITH: I do not think you could, no.

THE CHAIRMAN: The difficulty is,--and I believe this is what Mr. Favreau is getting at--that there is apparently quite a wide variation in the cost of handling different articles, even apart from the staple lines to which you have referred as having fairly traditional fixed mark-ups for the dealers. For example, take the ordinary furniture dealer. He considers that he has a higher cost of operation than a grocery store operator.

MR. KEITH: That is right.

THE CHAIRMAN: And even within the furniture business, there will be items which move fairly rapidly, as against other items which perhaps will sit on the floor for six months or so before they are disposed of. That, in itself, means a variation in the cost of operation. And then, there are variations also arising out of the amount of space required and the amount of packaging and handling, and whether any real salesmanship is required to sell it, or whether the goods will sell themselves pretty well.

There are all sorts of things which enter into any true appraisal of the actual cost of handling a particular article.

MR. KEITH: I realize that.

THE CHAIRMAN: And what Mr. Favreau is getting at, I believe, is that if you set a fixed rule of the average, then you force up his average right away; because he can sell nothing below that average which he has been doing. Everything that was below the average goes up to that average; and then his average goes up again. The point is, where do you stop?

MR. KEITH: I realize that. But in practice, actually, as the evidence has shown, as it has been produced to this Commission, the number of items that lend themselves to loss leadering are not numerous. They have to fall into a category of price range, size range and

type of thing to be a loss leader.

In other words, I do not think there would be anyone selling Steinway pianos as loss leaders, or Cadillac automobiles, or Chesterfield suites costing \$400, or things of that kind. If the price is high--well, a loss leader has got to be something that will attract a lot of people into a store. And that means that it has got to be an article that a lot of people would have a possible use for and would have the money available to purchase.

As you know from the evidence that has been put forward here--for example, this General Electric Company uses kettles and toasters and things like that. They are small items. You do not see them using General Electric stoves selling for \$350 as loss leaders.

They have got to be within the realm where a lot of people can buy them if they are put on sale. And they have got to be something that is nationally known, and the price is recognized in advertising it. Otherwise, if no one in general knows the price of it, it would not serve as a loss leader, because it would not entice people to come into the store.

I suggest that, in practice, the range of articles that lend themselves to loss leadering are within the middle bracket of price, size and number. They are the type of commodity that a great many people would buy.

That excludes a lot of articles that you might mention, such as big Chesterfields, and that sort of thing.

THE CHAIRMAN: Well, in so far as a good many advertisements which have been brought to our attention would indicate, it does not seem to exclude large white goods appliances such as stoves, washing machines, Frigidaires, television sets, and the like. Perhaps television sets would not be classified as white goods. But I am referring, you see, to fairly large electrical appliances, in which the advertised prices run into hundreds of dollars, but the advertised cuts may also be \$100 or \$150. There has been a good deal of that kind of advertising.

MR. KEITH: Of course, that is another problem entirely--the fair trade practices, honest advertising, and so on. I suggest in many of those cases that you mention--if not in all of them--that actually there is not a sale below the cost, within the definition.

THE CHAIRMAN: Perhaps you are right in that regard; but they have been brought to our attention sometimes as loss leaders.

MR. KEITH: I know that; but I do not think they are loss leaders, really. Like a lot of people say about cigarettes, if you actually analyze the mark-up on cigarettes, you see that it is a fair mark-up.

THE CHAIRMAN: Even with regard to these traffic appliances?

MR. KEITH: Yes.

THE CHAIRMAN: General Electric and Westinghouse, irons, toasters and so on?

MR. KEITH: Yes; they have a pretty fair mark-up.

THE CHAIRMAN: But a lot of the dealers who have appeared before us, some of whom have been alleged to be loss leadering in these articles, have all maintained that they made a profit on them.

MR. KEITH: Well, I know we made a pretty extensive study of that before coming down here, because naturally we were kind of conscious of the fact that you would want instances of it.

We looked into those articles. We got a lot of ads--I have a whole briefcase full of them here--and, on analysis, these wonderful bargains advertised here do not turn out to be anything near as wonderful as the reading of the ads would imply when you get there.

THE CHAIRMAN: Not any more advantageous anyway?

MR. KEITH: No, certainly not any more advantageous, anyway, than the ads imply. And to call them loss leaders or to possibly fit them into the definition that we have--well, we simply could not do it, that is all.

Because in those cases, at least in Canada, up to date, they seem to have been making a mark-up on them. But that does not apply to these small items, where they actually were giving them away at less than they paid for them.

THE CHAIRMAN: Would it be your opinion, then, Mr. Keith, that there is a good deal of leading used in the retail field, but very much smaller proportions of what might more properly be described as loss leading?

MR. KEITH: That is right.

THE CHAIRMAN: Do you think loss leading is extensive at all in the proper sense?

MR. KEITH: I do not think it has been for the last few months, no. We found considerable difficulty in getting concrete examples of it, as a matter of fact. But everyone has been most careful and cautious on this subject, and I think it is only natural that they would be at the present time.

THE CHAIRMAN: I take it from your brief and from the statement you have made now that the Retail Merchants Association does not object to leading, but only to loss leading, as you have described it?

MR. KEITH: Oh, the Retail Merchants Association is set up, and its purposes are to promote fair and proper trade practices among themselves, for the benefit of retailers and for the benefit of the general public. That

is the purpose of this association.

It is a non-profit organization that is subscribed to by retailers. And, as I say, its objective is to do away with this misleading type of advertising and overcharging on items which accompany it, which counsel for the Commission asked me about today.

THE CHAIRMAN: But that is not what I was getting at. We are not discussing at the moment questions of misleading advertising or deceptive practices; but it is quite feasible, it seems to me, that merchants might lead, in the sense of cutting what you might ordinarily regard as his regular price for the purpose of leading people into his store to do business. All I wanted to do was to find out whether your Association objects to that particular practice, or only objects where the cut is so deep that it amounts to a loss leader.

MR. KEITH: Only where it amounts to a loss leader, yes.

THE CHAIRMAN: That is what I gathered.

MR. KEITH: Yes. Oh, no, those practices are definitely carried on. Whether the rank and file of the Association like it or agree with it or not, they are going to go on. All the Association can do is set up standards and say to its members, "Now, we expect you to live up to these standards."

THE CHAIRMAN: And when you say they

recognize it is going to go on, you mean they recognize that it is impossible to prevent.

MR. KEITH: Yes.

THE CHAIRMAN: That there are various devices by which, if a retailer wishes to give a reduction, he can do so.

MR. KEITH: Yes.

THE CHAIRMAN: There certainly have been instances given to us of methods by which prices can be reduced, while still apparently keeping to the list or the suggested price.

MR. KEITH: Yes, quite. Of course it is always the other fellow who does it, you know.

THE CHAIRMAN: Your Association recognizes that that would happen anyway, I suppose?

MR. KEITH: Well, that is right. After all, the people who are doing these things are members of our Association. We might as well be honest about it. We can frown upon it if we like, and say, "Now, now, you should not do that"--but that is all we can do.

THE CHAIRMAN: Mr. Wickwire, do you wish to ask any further questions?

MR. WICKWIRE: Yes, there is one question I omitted to ask. I refer to page nine of the brief, the third to last paragraph, where you say:

What they cannot compete against is the power of millions of dollars, used as a bludgeon to destroy them one by one. Not only do the vast resources of these financial giants enable them to absorb losses, but since they have numerous outlets, the loss in individual centers, or even in whole provinces, can be buried in an overall profit.

Have you any evidence, or are there any circumstances you know of where that has occurred?

MR. KEITH: No, except that in the brief submitted here, for example, that Safeway Stores make an overall profit, and Mr. MacAulay says, "We are not in business to lose money. We are in business to make money and to make a profit." And he puts in his figures showing their overall-operations and showing that they make so much percentage on their gross sales. But that is no guarantee that, in individual instances, they are not actually losing money on individual articles or even in outlets, certain outlets.

MR. WICKWIRE: That is presently illegal, is it not, under the Criminal Code?

MR. KEITH: I do not know why it is illegal. How could it be illegal?

MR. WICKWIRE: Your suggestion is that they deliberately, in a given center, or even in a whole province, sell goods at a loss for the

purpose of eliminating competition?

MR. KEITH: It is quite possible that they do that.

MR. WICKWIRE: Whereas, in the overall picture they make a profit. You say that that has been done?

MR. KEITH: No, I say it is possible to be done. It is possible to be done. But an individual outlet which has to stand or fall upon that outlet, has got to sink or swim on what profit it makes. If it makes a loss, then it is a loss.

MR. WICKWIRE: May I point out to you that in my view at least that language is very strong language. And if there is any charge, or if you know that that has taken place in Canada, then I think the Commission would like to have instances of it.

MR. KEITH: No, I do not say that. For example, in this tobacco war that we had in Winnipeg; it raged along there in great style for a while. But it was not going on anywhere else. And it cleared up there eventually. If it had carried on very much longer there were several tobacconists in Winnipeg who would have had to close up their businesses, who would practically have disappeared.

MR. WICKWIRE: So that, was that tobacco war you speak of in Winnipeg a war between different manufacturers or---

MR. KEITH: No.

MR. WICKWIRE: ---or different retailers?

MR. KEITH: Safeway Stores started selling cigarettes at a price below which cigarettes could be purchased by the retailers.

MR. WICKWIRE: You do not know who started that one. I suppose you would refer to your poem again.

MR. KEITH: I do not know who started it. It may have been Shop Easy, or some other store. But I know who carried it on, and the disastrous effect it had on the tobacconists in that town who had been in there for many, many years. Some of them had been there 50 or 60 years.

MR. WICKWIRE: I suppose some of them are members of your organization.

MR. KEITH: I do not think so--are they? They seem to run their own affairs. But no one else was worrying--in Vancouver or in Montreal--about the price of cigarettes. But those fellows were right up against it. They were going out of business. If it carried on much longer they would have been broke.

From then on, I suppose, the chain outlets would have been the ones to sell cigarettes. That is all there is to it. Because it is hard to get back into business again.

MR. WICKWIRE: I suppose if the instances to which you have referred had been

started by one of the independents, that the chains, in self-defence, would have had to meet them?

MR. KEITH: I suppose so.

MR. WICKWIRE: And I am not defending the chains; but that is the way those things sometimes start.

MR. KEITH: I suppose they at least allege that they have an excuse for starting it--but whether there is one or not I do not know. But I know the results of it. And it is pretty disastrous, I can tell you, for the poor fellow who is trying to make a living there and who has been making a living. But there is a case where a loss could occur in one spot, and be entirely swallowed up in the organization. In fact, the other outlets in that chain probably do not even know that it is going on, and care less.

MR. WICKWIRE: That is all I have to ask, thank you.

THE CHAIRMAN: Thank you for coming, Mr. Keith. If any others of your delegation wish to add anything, we will be quite happy to listen to them.

MR. KEITH: Thank you very much. I believe that is all we have to say.

REPRESENTATIONS:

Retail Tobacco Association of the Province
of Quebec:

H. J. Garfinkel

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THE CHAIRMAN: The next brief with which we will deal today is that of the Retail Tobacco Association of the Province of Quebec. I believe Mr. Garfinkel represents them. What is your full name?

MR. GARFINKEL: Harry Joseph Garfinkel.

THE CHAIRMAN: And what is your position with the Association--just in case it has changed in the meantime?

MR. GARFINKEL: Honorary President.

THE CHAIRMAN: You are still Honorary President?

MR. GARFINKEL: Yes.

THE CHAIRMAN: And are you associated with anyone in the presentation of this brief, or are you alone?

MR. GARFINKEL: Alone.

THE CHAIRMAN: Then, Mr. Garfinkel, you may proceed to read your brief and then discuss it, or you may discuss it as you go along.

MR. GARFINKEL: I shall read it right through.

THE CHAIRMAN: Very well, the

same as you did last time.

MR. GARFINKEL: It is as follows:
The small tobacco retailer's problem as presented to this Commission on June 7, 1954 at Montreal and previously thereto on May 20th at Ottawa must be carefully analyzed by this Commission so that in its final report to the Government of Canada a solution of this problem may be offered.

In a brief, submitted on June 7th, we asked for tobacco regulations of the kind that exist in France--through the Regie. There seemed to be some doubt in the mind of the counsel for the Commission as to whether this law still exists or whether it has been abolished during the past two years. We would confirm herewith that prices for tobacco in all forms, matches and playing cards, at all levels, are set by the Government. This does not apply to other commodities.

MR. FAVREAU: Does not the Government have a monopoly in France?

MR. GARFINKEL: That is right.

MR. FAVREAU: Owned and controlled?

MR. GARFINKEL: They sell to distributors who, in turn, sell to the small retail outlets.

MR. FAVREAU: Like liquor in certain of the provinces?

MR. GARFINKEL: The same as the manufacturer sells to the jobber here, and the jobber, in turn, sells to the small outlets. But all the purchases must be bought through the Government, similar to the Liquor Commission, when he sells to a tavern or a cocktail lounge.

MR. FAVREAU: Thank you.

MR. GARFINKEL: Then, to continue:

Amongst the different reasons stressed by the Government during the debate concerning passage of the law prohibiting price maintenance, was the point that there were signs of inflation and that price maintenance should be prohibited in order to protect the consuming public thereby suggesting an important relationship between the two. This proved a fallacy and this Commission has now been called upon to find the proper remedies through the report which it will make.

We wish to list herein several points which show the failure of this law and at the same time would offer some suggestions that may solve the problem of the small tobacconist..

1. In a report emanating from Rome and published in the Montreal "Gazette", August 19, 1954 issue, and released by the United Nations Food and Agriculture Organization, farm prices

during the year 1952-53 fell by 17 per cent in the U.S.A. and 23 per cent in Canada and were closely followed by wholesale prices but retail prices fell, in the same period, only 2 per cent in the U.S.A. and 8 per cent in Canada. We, the consuming public, are at a loss to understand that if the farmer's prices have dropped by 23 per cent in Canada against only an 8 per cent decrease in retail prices, what has become of the 15 per cent in between these figures? Is it possible that this money is being used for the opening of new SuperMarket food chain establishments that involve a quarter to a half million dollars per unit? Or, on the other hand, are cigarette cut-prices being used as a cover to hide other high profits food chains are making? In the final analysis, despite cigarette cut-prices, this could be an attempt to portray that chain food stores are operating profitably in the sale of cigarettes. This could be the sole explanation as to why certain food chain stores can make a statement that cigarettes are a profitable item at their prevailing cut-prices. To elaborate

further on this--in the September 3rd issue of the Montreal "Star", a Canadian Press dispatch shows the cost of living as having taken a sharp increase since 1952 when the law abolishing price controls was first enforced. In the index, based on 1949 prices equalling 100, the jump was due almost entirely to higher food prices, mainly potatoes, beef, lamb, eggs, citrus fruits, tea and most canned goods. The only prices showing a drop were fresh vegetables and pork. This definitely shows that the argument relating price controls with inflation used in the debate when this bill was passed covering the major industries in Canada, was nothing more or less than humbug and nonsense.

2. In merchandising, honest competition should always exist so that the consuming public are in a position to purchase at the best possible value but not dishonest or unfair competition. For honest competition that exists, from the manufacturer to the ultimate retailer who supplies the consumer, what better examples can we point to than the small

merchants who since the days of Confederation have built themselves into massive giants, such as, in Montreal-Henry Morgan & Co. Ltd., Dupuis Freres, Ogilvy's Ltd., Freiman Ltd., of Ottawa, the T. Eaton Co. Ltd., and Robert Simpson Company of Toronto, Woodward's of Vancouver and the Hudson's Bay Company. These organizations have competed very keenly with one another to the benefit of the consuming public. Thousands of other small merchants have been able to follow in their footsteps in competition with them. But they do not compete by the loss-leader practice.

In the case of the small tobacco merchant, he is being kicked all over the lot by price malpractices of a number of large food chains. They are also forcing ethical food chains to follow in their footsteps in order to maintain their clientele.

We have the following suggestions to offer as a solution to these unethical practices, either as amendments to the Act or by restoration of previous practices existing prior to the enactment of this law.

The law as it presently stands is not practical for all Provinces. What might be

good for British Columbia may be a detriment to Quebec or Ontario.

1. Our first suggestion is that the law be amended so that these matters fall within the jurisdiction of the Provincial Governments who best can decide their own resale price regulations, in the same way as in nineteen States of the Union in the United States of America. This has given the small man an opportunity for a fair living standard in serving the consuming public and has made it possible for him to live less dangerously.

OR- If this is not legally feasible, the Federal Law should be amended to read that any article under a resale price of 50¢ should be exempt from the Act. Multiples of 50¢ items when grouped together should be classified in the same manner to avoid the possibility of unethical merchants using a cellophane strip around several of the same or different items to group them under a different price classification. In the tobacco field this would eliminate the price cutting of cigarettes in carton lots of 10 packages or tins of 50's.

2. If the Federal Government does not feel

inclined to amend the law in this manner to cover Canada this power should be delegated to the Provincial Government.

We feel that the members sitting in the House of Commons are, in the majority, Law graduates without proper training in Commerce and this lack of training is a drawback to their qualifications to enact laws dealing with commercial matters. The few sitting members who have had such experience are in the minority and can only have taken the line of least resistance to have permitted such laws to be passed. It might be a good suggestion to see that civil servants who are used in advisory capacities to Cabinet Ministers be given a leave of absence at the expense of the Government, from time to time, to take courses in Commerce and Merchandising in the numerous universities throughout the country who offer this course. Our Cabinet Ministers would have been in a better position to get the proper information from departmental heads had they had this training and thousands of small merchants would not be facing the deplorable conditions that now confront them in which they are unable to meet their overhead and gain a livelihood

for their families.

It might also be a suggestion to invite the individual heads of these large retail department stores across Canada to sit in with your Commission to help analyze the situation and arrive at a just and equitable solution of this problem for those who are endeavouring to serve the public honestly.

Something similar to this took place in 1936, when the late Right Hon. Mackenzie King called upon the late Arthur Purvis, President of Canadian Industries, as a businessman--not a legal head or a lawmaker--to act as chairman, in that crisis, of the National Employment Commission, in 1936. In those days we had a crisis of unemployment.

The late Prime Minister saw fit to bring in businessmen. Probably a group of these businessmen, who have competed keenly through the years, could go ahead and offer many solutions--because we notice that everybody has a different opinion. We do not seem to be able to arrive at common solutions. What one would seem to think fair, another would think unfair. We do not all have the same theme or thought of what would be considered a solution of our problems.

I shall now proceed, Mr. Chairman, with one or two things that have occurred

since this brief was filed. However, before doing so I would proceed first of all to file the exhibits as they are set out in the brief. One of these is an extract from the Montreal Gazette, an extract from the Montreal Star, a copy of the fair trade law and the Unfair Sales Act of the State of Massachusetts; 79 sheets consisting of 75 names of Province of Quebec retailers who are suffering through these unfair price practices. This is formally presented, and it is a copy. The original was presented to the Minister of Justice some time ago. I am asking that they now be filed as exhibits, with my evidence.

THE CHAIRMAN: Then, we will file these exhibits at this point.

EXHIBIT NO. OF-6: Clipping,
Montreal Gazette, Thursday,
August 19, 1954.

EXHIBIT NO. OF-7: Extract,
Montreal Star.

EXHIBIT NO. OF-8: Fair Trade Law
Pamphlet of the State of
Massachusetts.

EXHIBIT NO. OF-9: Several sheets,
clipped in three groups,
purporting to be a petition
addressed to the Hon. Stuart
Garson, Minister of Justice
and Attorney General for
Canada.

THE CHAIRMAN: Then, Mr. Garfinkel, you may proceed.

MR. GARFINKEL: In the edition of the Montreal Star of Friday, September 3, they show a price index jump to 117, a record since January of 1952. That is just about the time price maintenance was abolished.

In the United States, with 19 States having Fair Trade Law practices, the 1954 index, as of August 20, which I happened to forget but which I will send on to you to be filed--indicates that the United States Department of Labor figures which I got yesterday morning from Washington show the overall picture in the United States as a cost of living index of only 115.

In other words, in Canada, we for years, previous to price maintenance being abolished--we all the time knew that our cost of living was on a lower cost per dollar than it was in the United States. But, with all our practices of abolishing price maintenance, we find that we had two points higher as of August 20 in the United States as against September 3 in Canada, as released from Ottawa--117 in Canada as against 115 in the United States. That is based on the 1949 level of 100.

In the same time food--that is, the general all-round, all-over index, in food--and, by the way, we will file that report we got yesterday from Washington. In food, there is a slight variation. In Canada the food cost is 114.4, and in the United States,

as of August 20, it is 114.6. So you can practically say it is $2/5$ of one point higher in the United States. But taking everything all down we are two points higher.

Those figures will be filed, official figures as we got them from Washington. And I forgot to bring them with me when I came up here. But they will be sent up, and if you wish to give them figures, you can go ahead and mention those figures now. If you wish to file them now, I can take a memorandum for purposes of reference, and send them on. I can send them to Mr. Davidson, at the offices of the Commissioner.

THE CHAIRMAN: When they are received from you, we can advise you as to what numbers they will have, if you care to refer to them again.

MR. GARFINKEL: Thank you.

Now, I might mention that certain food chains--and bear in mind I am not attacking all food chains--certain food chains, the same as a small man, a small merchant who starts cut pricing, and the next one follows--as we heard from the previous speaker, and we don't know who starts it--but certain food chains, the business practices of those food chains are of such a nature that it forces the ethical food chain to follow, if they want to maintain their clientele. We had

an experience similar to that last week in Montreal. I want to give you an example of what took place, as far as food chains are concerned--and I will refer first of all to a little explanation which took place here yesterday, and which I took out of the Montreal Gazette this morning--by Mr. Tilley.

I really don't know what he is talking about, frankly speaking. I don't know what he is trying to explain--if he explained anything--and if the newspaper report is what it is supposed to be--and I would like to be informed before I continue on.

He says here that he does not think that a penny or two is an inducement that causes people to come to chain stores to buy cigarettes. And he also goes further on to say, "I do not think chain stores cuts bring more people in the chains to buy cigarettes." He also says that the purchasing of cigarettes has shifted from the man's job to the woman's job, and that a great many cigarettes are being purchased by the carton.

Well, did he inform you what the price of the carton was? Let me refer you to my brief of June 7, where I explained that the day of the man buying cigarettes, as long as cut prices exist, are past, as long as there is a saving in the chain stores. She says, "John"--if I remember the exact words--"you

give me the money for a carton, and I will put a package of cigarettes in your pocket." I would have thought that the Imperial Tobacco Company would have had a lot more to say for the benefit of the small retailer. In fact, they set up absolutely nothing but the hole of a doughnut, if that is the statement they made here yesterday.

MR. GERIN-LAJOIE: Mr. Chairman, I am wondering if it is fair for a group who have appeared before this Commission to be referred to by other persons or groups only through newspaper reports. I am just putting that question before you.

MR. GARFINKEL: I am just expressing myself, and I wish to talk about it later on. I am either right or wrong, and if I am wrong I want to be corrected. I can only go by what I have read.

THE CHAIRMAN: The newspaper report, of course, is not complete. It could not report everything that Mr. Tilley said. Some of the things which you have quoted I recall having heard him say, or things very close to that.

I think, with regard to the difference of one cent, that he said that one cent difference between chain stores and small tobacconists would not make a very great difference, and that that had been their experience pretty well

in Winnipeg, where there is a one cent difference, between the price the chain store charges and the price the others normally expect to charge. He did not say one or two cents. When you get into a somewhat larger spread, you have a bigger effect.

MR. GARFINKEL: He does not say at whose expense the one or two cents--and I am not attacking Mr. Tilley--he does not say at whose expense the one or two cents is being anticipated.

THE CHAIRMAN: He was not dealing with that.

MR. GARFINKEL: He was not? However, I will carry on from there. Did he mention the carton, perhaps--before I carry on--did he mention that a lot of cartons are being sold? Would you have any recollection of that?

THE CHAIRMAN: I do not recall reference to the price of cartons. He did agree that there were a great many cigarettes purchased by cartons--by the housewives rather than by the husbands.

MR. GARFINKEL: Well, we will forget about Winnipeg, and we will take the city of Ottawa--which I covered this morning. I have been covering Montreal and Quebec for a long time. I have been covering these things since last March. And, as I said before, we are waiting for a favourable result; but "It's a long, long time from May to December".

And we hope that by Christmas we will have a very nice gift by this Commission, so far as the small retailers are concerned.

Mr. Tilley goes on to say that the women are doing the shopping for cigarettes. I might say, from one of the foremost female merchandising counsel, Miss Winnifred Kidd, that she wrote a book called, "Women Never Go Broke Shopping". Naturally, they never will as long as the men supply the funds.

But, on the other hand, why should they go broke shopping, when right here in the city of Ottawa one cent difference is found? I agree with Mr. Tilley that it might go unnoticed--but it is the small man who needs the three per cent off those three packages of cigarettes to make up a dollar. But you must take it from another angle: why are the carton sales going to the chain food stores? It is because the woman is a smart shopper. She goes in there and takes a carton off the shelf. Sure she does. She is taking the business away from the man, as we showed in our brief in the month of June. And she buys a carton of cigarettes for \$2.95. You forget the one penny, gentlemen. We are going to 3½ cents a package--from 33 cents or from \$3.30 a carton in Ontario to \$2.95. In the Province of Quebec we go to \$3.30 a carton--and that is from 35 cents, which the chain

food stores are dangling in front of the eyes of the Provincial Government, and say they are trying to do a good deed for the small man.

This saving of 35 cents a carton will definitely save women from going broke when they are shopping, because it gives her a pound and a half of hamburger. And a pound and a half of hamburger today, the way they are selling hamburger today, means in some food chains just minced meat. It gives three portions to a family, and it completes a dinner.

So, after all, if she can save one-seventh of a dinner a week, she is a very smart woman. But sometimes she is blind to the other items that the chain stores have. She guides herself by the cigarettes, and she gets the idea that everything else in the stores is in proportion with the cigarettes, namely, \$2.95 a carton.

Why is this? Because the small man has to get 33 cents a package, or \$3.30 a carton. He cannot go ahead and meet that competition for the simple reason that a carton of cigarettes costs him \$2.91 from the wholesaler. And the wholesaler delivers it to him once or twice a day, or three times a day--as many times as he needs--and he certainly cannot sell it for \$2.95. He cannot go ahead and sell it at four cents profit--which is practically

absolutely nil.

His time in putting it on the shelf is worth more than that, so he cannot definitely sell cigarettes at that price.

But the woman shopper is smart. She is getting this \$2.95 price, and she figures that everything else in the chain food store is of equivalent value, because cigarettes have had a price maintenance previous to the 1952 law that nobody dared to touch, because the profit was so small, as my previous figures show that I had here in June.

Nobody dared to go ahead and cut. Naturally, Mr. Tilley comes along and says that due to American cigarettes, they took the initiative. Before the Government instructed them to sell them as wholesalers, they took the initiative, and they sold the cigarettes to the chain food stores on the same level as the wholesalers.

More power to them; and personally I think the chain food stores are entitled to buy those cigarettes under those conditions, provided they do not go ahead and dissipate those profits, to the detriment of the small man.

A woman, when she goes into a store and she finds she has got to have cigarettes,-- when she goes shopping, she is blind to all other values. Gentlemen, I have been doing a

little shopping myself.

THE CHAIRMAN: Are you entering into competition with the smart housewife now, is that it?

MR. GARFINKEL: She goes into the food store, and she knows that she is going to shop. She has a list of things, but she sees something else marked "free", and it says, "Special, one cent sale"--and by the time she comes out of the store, she's loaded. Whether she believes that she got an exceptionally good value or not, I don't know; but she will never go broke because, as I said before, the men are behind her.

Here is a soap put out by Jergens-- a one cent sale, regular eight cents a cake; special, four cakes for 25 cents. You buy three and you get one free. This particular soap is on sale in all ordinary drug stores, put on the counter and put in the window, to bring people in. . It is also on sale by the chain food stores--the ethical and the unethical food chains. The ethical food chains portray it as it is; the unethical food chains, looking for a gimmick, the same as he is looking to go ahead and overcome that loss of profit on cigarettes, as I say--covering up by selling other commodities at high prices--and he takes the same package, and has the manufacturer-- and I do not approve of this; but I do not

think the manufacturer will be going into the ethics of merchandising--but he put down a label, "One Cent Sale"--but he does not mention that it is eight cents a cake. One cent more. A woman comes in and she picks it up in the unethical chain, and what does she find? The same soap is on sale by the small storekeeper and in the ethical food chains at 4 for 28 cents, increasing the profit by 12 cents on each dollar. One of them is bought, if you want me to go ahead and name the store, and you can go ahead and tell them--one is bought from the Dominion Store.

THE CHAIRMAN: There ~~are~~ only three in one of those?

MR. GARFINKEL: I tried one of them, to be frank with you. I needed it. I tried it; but the stencil is still on and I have the receipt. One was bought in the Dominion Store, and one was bought in an unethical chain.

No. 2; the woman does not know any different. She sees "One Cent Sale" and she imagines the soap is nine cents a cake, and that she is getting the whole thing for 28 cents, because it has a rubber stamp on it.

Then, the next thing comes along--oranges--39 cents a dozen. I walked in and I bought a dozen oranges. They are classified by numbers, and so on. I see the same numbers in all the chains. I do not want to confine the

business to any one chain--I just happened to mention the Dominion Store. That was a slip of the tongue.

I bought these oranges at 39 cents a dozen. I walked into an unethical food chain--and, now, bear in mind that I know this is unethical, but this I cannot swear to being unethical, and I will explain why I cannot.

They have oranges. They are 39 cents in competition as you see in every Thursday's newspapers. And the fellow goes over and he puts them all in the bin. I go home and I look at them and I find that there are four oranges this size, and eight oranges this size. Of this size at 39 cents, in the unethical chain, there are four of them. What do I find in the unethical chain? I find this, that there are four oranges weighing five ounces each, and eight of them mixed, weighing four or four-and-a-quarter ounces.

Now, we can understand that because perhaps an apple in a barrel may be a little larger, and so on. But certainly there is not that much difference in the size of oranges, so that they would be 25 per cent more value for your money.

I will tell you how that comes about. I do not say that the chain food stores, the unethical ones, do that. But I do know that in their drive for their employees to show

profits on fruit and vegetables, so that they do not get spoiled, they push and they push and they push. And they want to see higher and higher percentages.

The proof to that effect we filed on June 7 in the form of two statements, one of which showed a food chain showing 12.45 over a number of years, and one which showed an overhead of 14 per cent. One showed a gross profit of 15 per cent and the other showed a gross profit of 18 per cent.

In the one that showed 18 per cent gross profit, in their drive for their employees to get high profits, and so on, the line of least resistance is taken by the employees--not by the chains, but possibly by their employees. Perhaps it is a little cheating in selling--by the help. They just throw them all in, and they get an average. Possibly it would be about 29 cents.

But the woman is blind to all this. She gets them home and she puts them in the refrigerator and she cuts them up and uses them up.

Gentlemen, that is exactly what is happening. Then, in the case of hamburger, in the last week I covered four stores. One of the outstanding food chains came out with it in their ad--"Hamburger, lean, fresh ground, 35 cents a pound." A co-operative

chain came out with "Hamburger, lean, fresh ground, 33 cents a pound." An unethical chain came out, "Hamburger, lean, 33 cents a pound." Another outstanding food chain came out, "Hamburger, 29 cents a pound." And, gentlemen, the one who had advertised at 35 cents were practically caught with their pants down--and you will pardon the expression--in their advertising, because their competitors beat them to the punch by seven cents.

Now, bear in mind if the woman had gone to that store on Wednesday, before reading the other newspapers, she would have turned around and paid 35 cents a pound to that particular store. So, the next day, not to lose the bait, they did not reduce the 29 cents, but they carried this: "Choice red brand hamburger"--and I bought it on Wednesday and I bought it on Thursday, and it was identically the same meat. Why did they not put the ad in on Wednesday for this choice western red brand beef?

Gentlemen, that is the sort of thing that women are blind to. Those are the things that cover up the cigarette cut prices; because we know that even the chain stores selling cigarettes at \$2.95 a carton in the city of Ottawa, and they are paying the equivalent of \$2.70 a carton, cannot go ahead and sell their merchandise at a little over eight per

cent and stay in business, when their overhead
^{per cent}
 is 12.45/or in some cases 14 per cent or 15 per
 cent. They cannot, any more than the small
 man can at eight per cent. But there should
 be a legitimate profit so that a small man can
 go ahead and make something on cigarettes,
 maintained at a fair level--not at a level of
 \$2.95--or to purchase cigarettes in the Province
 of Quebec at \$3.31 from the jobber, and resell
 them at \$3.30, such as the chains do. He
 certainly cannot exist under those conditions.

Now, we might go ahead and say that
 is a spread due to mass buying. Gentlemen, if
 the manufacturer, as I once said before, had to
 go ahead and sell everybody at the same level,
 two or three cartons at a time, the cost of
 cigarettes would go up terrifically; because
 he would have to have a lot of extra costs,
 delivery costs, and so on.

In the city of Toronto they have
 grouped together. Why should Toronto be
 favoured as compared with the little storekeeper
 who cannot go ahead and have that type of buying?
 Why should the consuming public pay more in
 the rural districts for their cigarettes,
 simply because six people have got together
 and gone ahead and bought cigarettes?

Gentlemen, there is no control over
 those cigarettes--because there is nothing
 worse than a dry cigarette, when you turn

around and smoke it. The control today of cigarettes--the distribution--is done in the most efficient manner if it is done through the wholesalers. If the chain stores are going to be in that classification, due to their large buying power, then they ought to go ahead and use it to the best advantage by seeing that they average their costs, and sell cigarettes at least at their average cost, which runs from 14 to 15 per cent.

But we also know that we sell stuff at 12 per cent more. Now, certain food chains are in full accord with cigarettes not being touched. But when they take soap, and they get back to 12 cents, and the article is brought up--do you know the condition of soap--do you know the condition of this, that or the other thing--gentlemen, the same thing is done in connection with the grading of eggs.

That is exactly what takes place today when a woman goes shopping, and she is misled, and so on. It also goes to show, gentlemen, that cigarettes cannot be sold under those conditions.

Something has to be done, and we therefore call upon you to find a just and equitable solution which we hope that you will go ahead and find. And at this here point I would go ahead and say that on behalf of the small retailers across Canada, and those in the

Province of Quebec, that we want to thank you for the courtesy that has been extended to us, and the attention that you have paid to what we have been saying, and we hope that before Christmas--we hope, we hope, we hope--that something might go ahead and be done for the benefit of all in the season that is to come.

MR. GERIN-LAJOIE: Mr. Garfinkel, I have a few questions to ask, to try to clarify some of the points raised by you. I have a few preliminary questions regarding the second paragraph of your brief where, Mr. Garfinkel, you are referring to the situation in France. You say that you are asking for tobacco regulations of the kind that exist in France. Do you mean that you are asking for a retail price to be set by the Government? Or was that your position in June, and have you changed it now?

MR. GARFINKEL: We have not changed it. We are just answering something that arose at the time. I was not sure, or you were not sure whether it had been abolished. I knew it was not abolished, but I wanted to make sure. But you changed my mind possibly, so that I thought it might have been abolished. So I just confirmed it with the French Trade Mission.

MR. GERIN-LAJOIE: I appreciate

your explanation. But do you suggest that in Canada it would be a good thing, in your view, that the retail price of cigarettes should be set by the Government?

MR. GARFINKEL: No, definitely not. I think the Government should stick to its business, and let the tobacco people stick to their business.

MR. GERIN-LAJOIE: I was just wondering what you had in mind? Is it something else, or do I understand wrongly what you have said here--

In a brief submitted in June we asked for tobacco regulations of a kind that exist in France.

MR. GARFINKEL: We asked for the price of cigarettes to be controlled by the manufacturer. Price maintenance on cigarettes should go ahead and be permitted on cigarettes, because if you read the brief through you will see where we show that the small retailer had absorbed a big portion of the price reduction, and the manufacturer, in part, had passed on the saving to the consumer, over and above what Mr. Abbott had reduced in his budget. And we thought that tobacco should not be put into the same category as every other item.

As we go on, we state here further that the thing we really have in mind was the suggestion we make in the brief.

You can disregard this, here. It is only a matter of me answering the controversy which took place between counsel and me, with him giving me the thought, was I aware of the fact that it was abolished in France. I was not sure at the time. I thought maybe I was wrong, and I intended to correct myself. But I found out I was right, and I just wanted to correct it. But I don't think it is so important as to make it necessary to make a correction to show that I knew what I was talking about. Some people might have been under the impression that I did not know what I was talking about.

MR. GERIN-LAJOIE: Then, a little bit further on in your brief, about the middle of the page, I am wondering exactly what you had in mind, when you mention a decrease of 25 per cent in farm prices in Canada, and you compare this figure with the eight per cent decrease in wholesale prices. Is it not possible that the lowering in farm prices will not be reflected proportionately in the distributing price?

MR. GARFINKEL: Well, bear in mind this, that the cigarette manufacturers have seen fit to put the chain food stores into the category of wholesalers. Therefore they must be wholesalers in buying farm products and, after all, if it has been reduced on

the wholesale level, why has it not taken place in the stores? I go on from there and I question what has become of this 25 per cent. They are wholesalers. I am not classifying the chain food stores any more as retailers; I am classifying them as wholesalers--which they claim they are, through their buying power.

MR. GERIN-LAJOIE: But what I mean there is that the cost of getting the product from the farm and from distributing it to the individual stores may not have come down, even if the price of the farm product on the farm has come down, is that not correct?

MR. GARFINKEL: There is that possibility.

MR. GERIN-LAJOIE: Even if the Imperial Tobacco Company brings its prices down, the wholesaler does not necessarily have a reduction in his cost of distribution to retailers?

MR. GARFINKEL: That is exactly what has happened. As I said before, not only has the Imperial Tobacco brought the prices down---

MR. GERIN-LAJOIE: It has happened once, I agree.

MR. GARFINKEL: No, it has happened many times, in years gone by. And the same proportion of going up, bear in mind--remember, we have to go ahead and balance the scale. If the Imperial Tobacco Company increases the

price, and it costs me more money to do more business, financing and otherwise, and I just pass that on to the public, then I am not taking advantage of the public.

And when the Imperial Tobacco Company, due to taxation, reduces the price, and they go still further and put their hand in their pocket, along with the retailer's pocket, and we pass it along to the public, then we say we are being honest with the public and giving them not only what the Government gave us in taxation reduction, but still more. This is done in the hope that they will turn around and give us goodwill. In this here case we see a 25 per cent reduction, and an eight per cent decrease.

MR. GERIN-LAJOIE: What I have in mind is---

MR. GARFINKEL: You have given me the comparison of the Imperial Tobacco Company, and I am only answering you with respect to them. I do not say that possibly this 23 per cent could not be set down; but certainly no 66 2/3 per cent goes into the marketing, in bringing it from the farm. It says distinctly in the report of the United Nations that **from** 50 to 70 per cent of this goes into the marketing. If it is 23 per cent, then we have 11.50 which goes into marketing. We have only got eight per cent. We are still

short $3\frac{1}{2}$ per cent. What has happened to that? I am giving the maximum of what it costs for marketing, allowing the reduction and everything that is in the Gazette report.

MR. GERIN-LAJOIE: I understand what you have in mind. It is only three per cent, for instance. It is not the 15 per cent you mentioned in that particular paragraph.

MR. GARFINKEL: It might be 15 per cent. But I am giving the benefit of that, that even with the decrease of 23 per cent, if 50 to 70 per cent marketing applied even to that, there is still $3\frac{1}{2}$ per cent that the consumer is not getting from chain wholesale food organizations.

MR. GERIN-LAJOIE: I would like to get to the two main points I have in mind in connection with the bar of soap and the oranges which you have shown to the Commission. I would like you to clarify this point. I wonder if you are complaining of loss leadering, or just a deceiving practice by certain stores?

MR. GARFINKEL: Well, I don't think the manufacturer has been honest. And, furthermore, I don't think the chain stores have been honest, when there is a nationally advertised product in the stores showing a retail price of eight cents a cake--four for a quarter--three for 24 cents, and one extra for one cent--and he has a label printed which does not show the eight-cent price, and conveys the thought

by making it 4 for 28, that it is nine cents a cake, when the everyday price is eight cents. And he adds on one cent for the one package. You had better draw your own conclusions.

I see what you are driving at, but I think it is cheating in selling. The oranges-- I am not accusing the chain stores; it might be their employees. I am giving them the benefit of the doubt. But it is definitely cheating in selling.

THE CHAIRMAN: But it is not loss leadering.

MR. GARFINKEL: No, it is not loss leadering.

THE CHAIRMAN: Because they are charging a higher price than the other people are.

MR. GARFINKEL: Mr. Commissioner, it is not loss leading. They are cheating the public, because the nationally advertised price set by the manufacturer, the suggested price, is eight cents a cake. They are getting nine cents.

THE CHAIRMAN: The subject matter of this inquiry is loss leadering. We cannot extend into all the fields of possible unethical practices in trade. In that case, apparently, your complaint is that through this means one chain store charges three cents more for the same four cakes of soap than is being charged generally through the manufacturer's special

advertising offer. But that is not loss leading.

MR. GARFINKEL: But it helps to cover the overhead on cigarettes, and bring up their profits on everything else. We were talking about averages a few minutes ago. There are 101 different things that enter into it, of arriving at averages. That is one of the peculiar ways of arriving at it, when you show an eight per cent gross against 13 or 14 or 15 per cent overhead. How can you go ahead and do it? They certainly don't make money on their paper and twine, Mr. Commissioner.

THE CHAIRMAN: No.

MR. GERIN-LAJOIE: Coming back to the subject matter of cigarettes, I wonder if the main point of the complaint you have expressed, and which is the complaint of cigarette groups, cigarette dealers--you have complained of the practice of certain chain stores selling at a lower price than the ordinary tobacconist, as you described it before. Or is it really what you call loss leadering?

MR. GARFINKEL: Well, I think loss leadering is definitely--must take into consideration a man's overhead.

Gentlemen, I am going to give you an illustration of what loss leadering is, from the public point of view. We have a branch that has a \$50,000-a-year postage stamp

business. At one time the Government gave us one or two per cent for handling it. They found the Post Office Department was losing money on it; they took advantage of the opportunity of helping them to get postage stamps after hours. We still feel that we have to give the public that service. We are selling postage stamps as a loss leader, regardless of whether we get back our money. But it is a good gimmick to bring the customers in to buy something else. But the only problem we don't like about it is that perhaps a stamp is torn, we can't get anything for it, and when we go for one somebody pilfers something off the counter. So actually, we are selling postage stamps as a loss leader.

I want to be frank with you. If some people can go ahead and sell stuff at eight per cent, and have 14 or 15 per cent overhead-- well, I want to know where they are getting the difference. They must have a rich grandfather, or something like that.

MR. GERIN-LAJOIE: I will show you what I have in mind. The Commission has received a brief which has already been referred to, today. This is the brief of Safeway Company in Winnipeg, apparently, but presented to the Commission at Vancouver. I read from page 30 of this brief, where it says that---

At a price of \$2.95 per carton, Safeway makes a reasonable profit, and here is why:---

And I would like to know if you call this loss leadering or ordinary competition---

(a) the cost of a carton of cigarettes landed at Safeway warehouse is \$2.69. This leaves 26 cents to cover the expenses of warehousing, cartage to stores and retailing, plus a profit. Now (b) by contrast, a carton of assorted cereals, of about the same bulk, and weight, carries an upcharge of 5 2/3 cents over the landed warehouse cost, to cover the same functions.

And, quoting again:

Percentage-wise cigarettes in cartons carry only an eight per cent mark-up as compared with 14 per cent for the cereals. It is plain that in dollars and cents terms cartons of cigarettes have a larger spread with 26 cents against 5 2/3 cents in the case of cereals.

Do you find this proper reasoning for the manager of a store, or would you call the fixing of the price of a carton of cigarettes at \$2.95, as they do in that particular case, with the taxes they have in that Province--would you call that loss leadering?

MR. GARFINKEL: Well, in comparison with

the small man's problem--and sometimes you have to make a separation and allowance--of cigarettes being sold in that there manner, I would go ahead and say that if they sold nothing but cigarettes in the same amount of space, and just had people coming in there to buy cigarettes, and not be able to give them cereals and so on, and so on, it would be loss leader selling. But, taking the combine and putting it into the average with the cereals, that I mentioned before, they turn around and they hide the profit they are making as eight per cent, when they turn around and get cereal at 13 or 14 per cent, whatever it is--and it all averages out.

Now I will go ahead and take up the argument, what I would make more reference to is the amount of space it takes.

Well, we do know that department stores have notions departments and bric-a-brac, and so on, and they have to take averages. But what does not seem to come to mind, and what the small man does not seem to go ahead and understand is this: Can he sell cereals in proportion to what he can sell cigarettes? Has it got the magnetic drawing power to his store, even if he gives cigarettes away? Now, let us take Safeway, for example. You can take some of these food chains who turn around and pay \$2.91 and sell

for \$2.93, to force competition.

MR. GERIN-LAJOIE: You may say to the Commission what you like, on many subjects; but I would like to have your views on a particular practice, where a chain store sells at a lower price than a tobacconist. Of course, if I were the tobacconist I would not like that. But I am just asking if in your view that is only competition on the part of the chain store, or if it is loss leadering. I want to have this point cleared up. And if it is only competition, that type of competition which a certain group in our economic organization do not like, well, then, let us say so and we might find some remedy.

MR. GARFINKEL: If you take the dollar volume on cereals and the dollar volume on cigarettes and average it out, you will find that they are losing money when they are selling cigarettes at eight per cent. Now, you are asking me a simple question. Let us keep it clear, so I don't get bewildered. Because, after all, I have to keep my head here. You know, I have been going on with this for eight months. You have been examining everybody, and have more of a picture than I have in this field. You know everybody's likes and dislikes, and what they claim to be just, and so on.

I maintain that if he takes this cereal, on which he makes 14 per cent, and he

takes these cigarettes and takes the dollar and puts it into a pool and arrives at the overhead average, that he has got to lose money. But, on the other hand, if you want the answer: Can you go ahead and sell cigarettes at eight per cent? Well, I say you can give them away and make money, just so long as you get the customer into your store and sell him other merchandise. But if you keep cigarettes solely to the point, in proportion to cereals sold, then I say it is a loss leader, because the overhead cannot go ahead and cover it when you are selling cigarettes at eight per cent.

MR. GERIN-LAJOIE: But the point which is being made here is this, that the percentage is not the whole explanation. If you take a carton of cigarettes, about the same size as a package of cereal, you make on one 14 per cent profit and on the other eight per cent profit. But on this particular carton of cigarettes you make 26 cents profit and you make only five cents profit and a fraction on the other. So is it not more profitable, in your view, to sell cigarettes?

MR. GARFINKEL: No, no.

MR. GERIN-LAJOIE: With that percentage of profit?

MR. GARFINKEL: No; and I will tell you why--no--you cannot go ahead and order a certain amount of cereals each morning. If

you take the same proportion of cigarettes to get the dollar volume, you have a pile of cartons this way and that way. All you need is maybe 12 packages of cereals one day. But you need about 50 cartons of cigarettes. Why doesn't he answer you that there way, about the space it takes according to dollar value? That is why I say you have to take the dollar value, in comparison. If he is turning around and selling the same proportion of cereals as he is cigarettes, then I tell you I am saying yes; but let me say that with a package of cereals this size, he will sell 12 packages of cereals a day. But he will sell 200 cartons of cigarettes a day, and he may turn around and sell 3,000 cartons in a month.

Gentlemen, I have made the test. I know what you can sell of cigarettes in cartons. When he tells you the cost that takes up that much room, and he makes 14 per cent, how often does he sell it?

We know that efficient merchandising as advocated by leading experts is to keep your inventory down and get your turnover; but you certainly must have an inventory if you are going to go ahead and do any dollar volume in cigarettes at any price,--at cut prices. But you certainly don't need much inventory and much space to take up cereals, but you ~~have~~ the same warehousing charges

for a case of cereals and the same warehousing charges in proportion to the dollar turnover you are doing on cigarettes. And you might have 50 cartons piled up. Because you have to get that turnover. But if you take it on an average, as I am trying to bring out, according to the space it takes, cigarettes actually, according to the dollar volume they do, take up 50 times as much space as cereals. And that is why I contradict that remark. Because you are not selling the cereal. Twelve packages in a store in a week--but it is not 12 cartons of cigarettes. You need 12 cases to last a week.

MR. GERIN-LAJOIE: Mr. Garfinkel, is it not true that the dollar volume of cigarettes is much smaller than the dollar volume of cereals?

MR. GARFINKEL: No doubt; that is exactly what I am saying.

MR. GERIN-LAJOIE: And if the turnover is not much larger in cigarettes, then is that not a reason for having a lower profit?

MR. GARFINKEL: Well, no; I got to come back to what Mr. Tilley says. He does not think cigarettes, as a whole, have increased, due to cut prices. He claims that cigarettes have only increased due to carton sales, and that it has not increased the consumption of cigarettes at all.

Well, how many cigarettes can they go ahead and sell exclusively in their own stores without taking it away from their next door neighbours?

The next door neighbour has to go broke. I agree if I had to stand on the corner of Bank and Sparks Street and have a cigar store, and sell cigarettes at a fraction of a cent a package against my competitor across the road, I have to go out and crucify my competitor, in time, and put him out of business, and make an awful lot of money.

The Commissioner said previously in the hearing that as long as the small men started to cut prices, the cut price practice, it would go to the big men. Well, the small man is only doing a small business. He starts to make a livelihood, and when he gets up into the upper bracket he wants protection, and he comes to the Government, and God knows who else, for protection. He is like the communist. If he has no money he is a communist, and when he gets to have money he is a capitalist.

MR. GERIN-LAJOIE: Mr. Garfinkel, I was just taking your own words, that the turnover of cigarettes in the chain stores was very large.

MR. GARFINKEL: It certainly is.

MR. GERIN-LAJOIE: And I was wondering

if you agree that that would be a reason for having a lower mark-up on cigarettes?

MR. GARFINKEL: It has gone up 45 per cent in the Province of Quebec. I have my figures. And at whose cost? Well, it was not by increased consumption, because the first three months it only showed an increase of 15 per cent. It has gone up at the cost of taking business away from the small man, channelling it away from him, and putting him out of business, by enticing people to go and buy other merchandise,--whether they turn around and buy soap at higher prices, or lower prices--just to get it in.

As we said, a woman will never go broke shopping--but she is sometimes blind to values.

MR. GERIN-LAJOIE: I would like to have a clarification of only one further point regarding your proposal at the end. You propose, as an alternative to another suggestion, that the federal law should be amended to read that any article under a resale price of 50 cents should be exempt from the Act. Is the idea of this value of 50 cents just to cover the case of cigarettes?

MR. GARFINKEL: In one case, yes; and, in another case, I don't think it would bring any hardship on the consuming public on an article of 50 cents, because you can't defraud

them of very much, can you. And the reason I brought that up was this, that I have had quite a controversy with the Minister of Justice. He has not seen eye to eye with me. One time he said, "Mr. Garfinkel, I am sorry, but my time is up." And he passed a remark, and I answered him, and he held me 25 minutes at the door, and I almost missed my train. I had to beg him, "Please let me go, will you. I will carry it out on a future date with you." He didn't wish me to go.

Two months later he wrote me a letter and he said--he more or less changed his tone, and he says, "There seems to be a feeling that something has got to be done", he says--"just exactly what, I am not in a position to go ahead and say, and so I will leave it to the findings of the Commission." So I am trying to give the Minister of Justice and his colleagues, possibly, a solution; if they feel that price maintenance should not be restored, or it should not go ahead and be tampered with, let us leave the small tobacco man in business, who serves from early morn to late at night.

And, believe me, I would not like to see a man, like Billie Irving says, need a cigarette after six o'clock at night, and cannot get it because the small man is not there to serve him. He would go wacky.

Personally, I am a pretty heavy smoker, but I can still do without a cigarette.

MR. GERIN-LAJOIE: Do you know how the people do in the United States, where they have no resale price maintenance on cigarettes?

MR. GARFINKEL: I can answer that. The chain food stores, the largest in the world, have at all times stood for fair trade practices. And in most cases, when they sold merchandise at lesser prices, they did it under their own brands--such as A. & P. We have read about the anti-trust laws having taking action against---

MR. GERIN-LAJOIE: Mr. Garfinkel, I am not talking particularly about cigarettes.

MR. GARFINKEL: I am keeping to cigarettes. I am coming to that. I have to build it up. If cigarettes were cut in the old days, and not cut today, and if the chain food stores want to go ahead and cut cigarettes, leave them make their own private brands, and just see how far they will go.

MR. GERIN-LAJOIE: Do you mean that cigarettes sell at the same price all over one particular State--or in any particular State?

MR. GARFINKEL: No, no; they vary. But I can tell you this, that I go down to the United States quite often, possibly more so than other people, because I represent an American firm that calls me to go down there

every six weeks; and I have a pretty good grounding on what goes on down there.

I don't want to mention the brand I represent, because possibly Mr. Tilley wouldn't like it. But I can say this seriously, that they are all behaving themselves. They are all discovering, since these tobacco chains and a few other chains have gone broke, that they had better behave themselves. They are watching one another, and there is very, very little variation in the price of cigarettes today in the chain food stores.

MR. GERIN-LAJOIE: What do you mean by "behave themselves"?

MR. GARFINKEL: Well, they keep the price just practically one or two cents on a carton. Sometimes it is half a cent for two packages. If a package of cigarettes is 26 cents, they will say it will be two for 51 cents. I have noticed in New York, which is one of the toughest areas for cut pricing-- I have noticed there is only one price, and you have to stand in line for half an hour for a carton of cigarettes. We sell them for six per cent less,--which is honest and truthful advertising. Macy's. But if you want to get it at your regular stand, you go over and get it. But if you want to walk five floors and take the escalator, and it brings you all through the store, and you

see everything that is going on, and you line up for half an hour--if people want to save 10 or 15 cents, to buy for 10 or 15 cents less, you can buy a carton of cigarettes for less. Every once in a while you will find a food chain which will do the same thing, on opening. But, mostly, they are all behaving themselves now.

THE CHAIRMAN: Thank you, Mr. Garfinkel; I think that is all--unless you have anything further to add, yourself.

MR. GARFINKEL: I have concluded everything, with my heartfelt thanks.

---Whereupon the hearing adjourned until the following day, Wednesday, September 15, 1954.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 22

OTTAWA

SEP 15 1954

RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF
an inquiry
Regarding Loss Leader Selling.

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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss Leader Selling

--O--

Hearing held (in public) in the Supreme Court
Building, Ottawa, Wednesday, September 15th, 1954.

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PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,	Chairman
Guy Favreau, Q.C., B.A., LL.B.,	Member
A. S. Whiteley, B.A., M.A.,	Member

--O--

APPEARANCES:

Mr. N. W. Wickwire, Q.C.,	}	Counsel to the Commission
Mr. Paul Gerin-Lajoie		
Mr. R. M. Davidson,		Secretary to the Commission
Mr. L. A. Skeoch		Senior Economic Adviser to the Director of Investi- gation and Research.

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REPRESENTATIONS:

Canadian Retail Hardware Association,
Represented by:
Roy M. Gilmour, Managing Secretary
M. A. Johnson, President
J. G. Cawker, Immediate Past President
Gordon McQuat, Senior Director.

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THE CHAIRMAN: I understand the first brief to be presented this morning is on behalf of the Canadian Retail Hardware Association, is that correct?

MR. DAVIDSON: That is right.

THE CHAIRMAN: Are the representatives of the hardware association here?

MR. GILMOUR: Yes.

THE CHAIRMAN: Would you let us know who you are, and your position with the association.

MR. GILMOUR: Gentlemen, my name is Roy Gilmour, and I am Managing Secretary of the Canadian Retail Hardware Association. Our committee has elected myself to be spokesman in this matter. In introducing myself, gentlemen, I would say that there are none of us in our committee who are professional speakers. We are laymen from our trade.

For myself, personally, I have been connected with the retail hardware trade for a period of 25 years. In the last ten years I have operated my own business, my own retail hardware business; and just on the 1st of September I have taken over the duties of managing secretary of our association.

With me is our president, Mr. Johnson, from Grimsby, Ontario, who has been connected with the hardware trade for 25 years. In the past 10 years he has operated his own retail hardware store, and he is now serving as president of our association.

The next member of our committee is the

immediate past president, Mr. J. G. Cawker, of Cawker Hardware of the city of Toronto. They operate three hardware stores in the city of Toronto, and Mr. Cawker has been in the retail hardware business for approximately 30 years.

The next member of my committee is Gordon McOuat, from Lachute Mills, Quebec, our senior director. Mr. McOuat has been in the retail hardware business for 20 years. He comes from a family of hardware people. His father and his grandfather before him were in the hardware business. Their business has been in operation since 1880.

THE CHAIRMAN: In Quebec?

MR. GILMOUR: Lachute Mills, Quebec.

Gentlemen, that is our committee. As I expressed to you before, we are not professional speakers, but we have come down to tender our brief to you. If we can be of any help in this problem, we certainly want to be. I feel that any discussion or answers given by our committee here will be based on actual experience as we see our trade, working actively in the trade.

THE CHAIRMAN: We are not particularly concerned about oratory in connection with this inquiry. We want to have the facts from the people who can give them; and that is exactly the category into which you fall, I should think.

MR. GILMOUR: Yes. We could be placed

in that category, I believe. At least, that was our attitude in coming down with this brief.

THE CHAIRMAN: We expect that your brief, and your presentation will be quite helpful to us. I might add that you may either read the brief and then comment upon it, or comment from time to time during the course of the reading of it. Then I suggest that if any other member of your committee wishes to add anything he might do so. That could be done at the end of your presentation. Following that there will be, I expect, some questions from Commission counsel.

MR. GILMOUR: I think, if we may, I shall read the brief through; and then, if any discussion arises at the conclusion of the reading of the brief, we will be prepared to handle it in that way.

THE CHAIRMAN: Very well. You may proceed with your brief.

MR. GILMOUR: Gentlemen, this is the brief to be presented to this loss leader inquiry. It is as follows:

The Canadian Retail Hardware Association, representing some 1,550 retail hardware dealers throughout Canada, wishes to record its appreciation to the Commission for this opportunity of expressing the views of its members on the practice of loss leader selling.

1. We believe other interested parties have outlined to the Commission the general undesirable features apparently inherent in loss leader merchandising - fraudulent advertising, etc. - and it is not our wish to burden the Commission by repeating these facts. However, we do wish to record the views of the hardware retailer in respect to this vexing problem.

2. Our submission will be considered under the following heads:

- a. What constitutes a loss leader in the eyes of the hardware retailer.
- b. Merchandising factors affecting the retail hardware trade.
- c. Advantages of loss leader selling.
- d. Disadvantages of loss leader selling.
- e. Summary of present and future merchandising conditions as seen by our trade.
- f. Recommendations.

3. What constitutes a loss leader in the eyes of the retail hardware dealer?

Small electrical appliances have long been one of the staple products of the retail hardware business. We know that traffic appliances, in particular, have represented a good volume

of sales in the average retail hardware store. Brand name appliances are the usual choices for loss leaders.

To illustrate the loss leader selling confronting our members today, we have compiled the attached table, summarising advertisements in Toronto daily newspapers from mid-April to May 31, 1954, showing the advertised prices of brand name small electrical appliances and, by comparison, the retail hardware dealer's cost for each appliance.

If it is your wish I can read this table. Shall I pass over this, at the moment, or shall I read it?

THE CHAIRMAN: Just as you wish. If there are some things you wish to draw to our attention in the table, specially, this would be a good time to do it. But, before you proceed further, when you say "Retail hardware cost" you are thinking of the price; you are not including overhead?

MR. GILMOUR: No, definitely not. That is the net cost to the dealer of the manufacturer's place of business. Then, in relation to this table, perhaps later on we could refer back to it, if necessary. However, at the moment, it is as follows:

from Mid-April to May 31, 1954

NO.	ADVERTISER	PAPER	DATE	MIX. LSTER	G.B. POLISHER	G... KNIFE	G.F. IRON	G.F. Jn. MIXER	G.F. POP T.O. SHER	TEST. STEEL
	Hardware Dealer's Cost									
				\$40.53	33.75(9)	3.78(2)	8.02(8)	17.27(s) 16.22(5)	19.25(s) 17.37(3)	14.65(s) 13.50(6)
1	Georges	Star	Ap. 13	39.95		8.95				
2	Danforth R.	"	" 13							
3	Danforth R.	"	" 14			8.95	8.95	16.50		
4	Georges	"	" 19	39.95		8.95	8.95	19.95	19.95	
5	Michaels	"	" 19			8.49	8.49	16.50		
6	Georges	Tele.	" 22	39.95		8.60	8.60	17.95		14.95
7	Better	Star	" 24							
	Appliances									
8	Georges	"	" 27	39.95		8.49	8.49	16.50	19.95	
9	Michaels	"	" 28	39.95	33.75	8.25	8.25	16.50		
10	Georges	Tele.	" 28	39.95		8.49	8.49	16.50		
11	Eddie Black	G.M.	" 29		33.75		8.95			
12	Georges	Star	" 30	39.95		8.49	8.49	16.50		
13	New Era	"	May 3		32.95					
14	Georges	"	" 3	39.95		8.49	8.49	16.50	19.95	14.95
15	Michaels	"	" 5		33.75	8.25	8.25	16.50		14.95
16	Georges	Tele.	" 5	39.95	33.95	8.49	8.49	16.95		
17	Better	Star	" 6			8.60	8.60			
	Appliances									
18	Michaels	"	" 10		33.75	8.25	8.25	16.50	19.95	14.95
19	Better	"	" 11							
	Appliances									
20	Georges	Tele.	" 13	39.95	33.95	8.95	8.95			14.95
21	Better	"	" 13							
	Appliances									
22	Bestway	"	" 14		35.95	9.83	9.88			14.50
23	Georges	Star	" 14	39.50	32.95	8.95	8.95			14.95
24	Consumers E.	"	" 18		33.95	7.95	7.95			
25	Better Appl.	"	" 18		33.95					



from Mid-April to May 31, 1954

No.	ADV. MESSR.	PAPER	DATE	MIX-MASTER	G.D. POLISHER	G.E. KETTLE	G.E. IRONS	G.T. Jn. MIXER	G.E. POP TOASTER	WEST. STEAM IRON
	Hardware Dealer's Cost									
				\$40.58	38.15(s) 35.43(3)	9.45(s) 8.78(4)	9.07(s) 8.42(6)	17.47(s) 16.22(3)	19.25(s) 17.88(3)	14.65(s) 13.80(6)
26	Georges Michaels	Tele.	May 20	\$	35.95	\$	\$	\$	\$	\$
27	" "	Star	" 21	39.95	33.75	8.95	8.95			
28	Better Appl.	" "	" 25		35.95	8.25	8.25			14.95
29	Georges	" "	" 25	39.95	35.95	8.95	8.95			
30	New Era	" "	" 25		33.75	8.25	8.25			
31	Michaels	" "	" 26		35.95	8.88	8.88			14.95
32	Better Appl.	" "	" 27		38.71	8.95	8.95			
33	Bestway	Tele.	" 28	38.85	35.95					
34	Georges	Star	" 31	39.95	35.95					
35	Better Appl.	Tele.		35.95						

Such advertisements by the same advertisers have continued to appear from that time until now.

A similar chronological listing could be made showing deep-cut prices on major appliances.

* Brackets indicate whether prices are for single items or package quantities.

Comments:

i. The advertising shown is not confined to the April - May period. Rather the table summarizes typical advertisements which are common at all times and which, in our opinion, are on the increase.

ii. It will be noted that in the great majority of instances, the items advertised are at less than the hardware retailer's cost. In a few cases the advertised prices represent dealer cost, or fractionally above dealer cost.

iii. The advertisements appear consistently; they do not represent job lot sales, inventory clear-outs, etc.

iv. In the eyes of the hardware retailer, when a competitive dealer (buying from the same or a similar jobber source) continually advertises and sells at below dealer cost, the competitive retailer is loss leadering. The above table illustrates, therefore, as best we can present it, the loss leader selling practice confronting our members today.

4. Merchandising Factors Affecting the Retail Hardware Trade.

a. The hardware retailer is confronted with the problem of a slow annual turnover.

According to D.B.S. reports his turnover ranges from 1.46 to 2.93 times per year. Obviously, therefore, he cannot operate on the smaller margins typical of the grocery retailer (for example) who enjoys a turnover of approximately 10 times annually.

b. Again based on the latest D.B.S. statistics available, the trend in sales in our trade is consistently downwards since the beginning of 1954. This is shown by the following table.

Percentage change in Hardware Retail Trade.

CANADA.

Jan. - Dec., 1953	over	Jan. - Dec. 1952:	+ 5.9%
<u>1954</u>		<u>1953</u>	
January	over	January	- 3.5%
Jan. - Feb.	"	Jan. - Feb.	- 3.2%
Jan. - March	"	Jan. - March	- 0.5%
Jan. - April	"	Jan. - April	- 1.2%
Jan. - May	"	Jan. - May	- 2.9%
Jan. - June	"	Jan. - June	- 3.1%

(Retail Trade, monthly reports, published by the Dominion Bureau of Statistics, Ottawa)

As a National Association, our concern must be for the welfare of all our members. Therefore we must think in terms of the average dealer.

Our analysis of the foregoing statistics is:

(a) Total sales volume is steadily declining in 1954 over 1953. We attribute a substantial part of the decline to loss of sales of small electrical appliances to cut-price outlets.

(b) The slow turnover in the retail hardware store makes it difficult to step up sales volume by any substantial reduction in margins.

In summary, therefore, the hardware dealer has little room for belt tightening. Given fair merchandising practices, we are prepared to meet all bona fide competition. We seek conditions of fair selling practices under which the more efficient dealer can survive.

None of our members, however, can compete for long with what we regard as unethical and unfair competition resulting from persistent loss leader selling in one of our staple lines.

5. Advantages of Loss Leader Selling.

i. Some consumers have undoubtedly secured some bargains in brand name merchandise.

ii. A few large dealers have undoubtedly built up a substantial sales volume, largely based on and at the expense of costly development, sales promotion, and national

advertising programmes of others, usually the Canadian manufacturer.

6. Disadvantages of Loss Leader Selling.

A. To the Hardware Retailer.

i. Potential loss of one of his staple lines, the small electrical appliance.

ii. Through the loss of these sales, reduced income and net profit, and increasing threat of business failure in our trade. It is this latter danger which is causing our members the greatest possible concern.

iii. Loss of consumer good-will. When the average consumer compares deep cut loss leader prices with those of the hardware dealer seeking a reasonable net profit, the consumer assumes that the hardware dealer is asking an exorbitant margin on all his stock. Loss leaders, therefore, mean not only the loss of sales in the loss leader articles themselves, but in addition the danger of lost sales in other merchandise.

B. To the Manufacturer.

i. We believe that loss leader selling will mean the loss to the manufacturer of much of his nation-wide dealer organization. Obviously, a dealer will not buy brand name merchandise which is being used as a loss leader, and sold below dealer cost. We do not believe

that it will be in the public interest for many independent dealers throughout Canada to discontinue handling many brand name lines, and for sales of this merchandise to become concentrated in the hands of a few large outlets in each heavily populated area.

ii. We believe that the manufacturer will lose much of his incentive to design and promote new and improved products. Clearly there will be no advantage to a manufacturer to make the costly investment necessary to design, develop and gain consumer acceptance for a new product if that new product will be at the mercy of any cut rate outlet which chooses to capitalize on the manufacturer's investment.

iii. The bulk of sales of brand name merchandise will become concentrated in the hands of a relatively few outlets. This we believe will be a logical development - the "monopolistic device" referred to by the McQuarrie Committee

iv. While loss leader merchandising may result, initially, in a stimulus to sales, we believe that eventually the manufacturer will suffer a net reduction in sales volume. We are of the opinion that the Canadian manufacturer requires the greatest possible number of dealer outlets, actively advertising and promoting

the sale of his products, to achieve the maximum sales volume.

v. To the manufacturer, therefore, we visualize that persistent loss leader selling will eventually reduce total sales, contributing to reduced employment, production, and labour income.

C. To the Consumer.

We believe that eventually the consuming public will suffer greatest as a result of continued loss leader selling, for the following reasons:

i. We have already indicated our view that the hardware dealer will be obliged to discontinue handling those Canadian-made brand name appliances being used as loss leaders. To fight loss leader competition, we must do so purely on the basis of price; this, we think, must be recognized. Consequently, we will have no alternative but to meet loss leader competition by attempting to market poorer quality merchandise (much of it probably imported) with consequent loss to Canadian production and employment.

While we will be extremely reluctant to take such a backward step, we are, lacking some legislative protection against loss leader competition, compelled to move in any direction

which will help maintain our livelihood. To the extent that the hardware dealer would of necessity be encouraging the sale of low quality merchandise, to that extent the public interest will suffer.

ii. We believe that the public will eventually get lower quality merchandise. When the monopolistic situation feared by the McQuarrie Committee develops fully (i.e. when sales of brand name products are concentrated in the hands of a relatively few large-scale dealers in each populated area) we believe the time will come when those large dealers will dictate to the manufacturer the price at which he (the manufacturer) must sell his goods to the dealer.

The cut-rate dealer who has developed volume based on loss leaders will demand that the loss leader be turned into a profit maker. Otherwise, the dealer will threaten to discontinue handling the brand name product, and promote inferior competitive merchandise. Thus we will have the anomalous situation where a few dealers will establish and maintain retail prices, subject only to the competitive influence of imported foreign goods.

The manufacturer will be in a position in which he will be obliged to meet the dealer's

terms. In most cases, the only way by which he will be able to reduce his price will be by lowering the quality of his merchandise, to the public detriment.

iii. The public will lose the benefits of new product design and development, and the attendant benefits to the economy as a whole. For example, we doubt that the Canadian General Electric company would repeat its costly programme on its floor polisher under present marketing conditions.

We do not contend that new products will be denied to the public, as long as we have unrestricted imports from foreign markets. However, we do feel that it is not in the public interest that Canadian manufacturers should lose their incentive to invest in new product promotion and production.

iv. We believe that many of the so-called cut-rate bargains, bought without assurance of service, proper installation, repairs, etc., are often phony bargains.

7. Summary of present and future merchandising as foreseen by this Association.

In summary, therefore, we believe that loss leader selling is a prevalent and intensifying merchandising practice which

threatens the survival of many dealers in the hardware trade. We consider the loss leader practice unfair and unethical competition, which will eventually contribute to monopolistic situation in brand-name merchandise. We consider that on balance the advantages of loss leader selling are considerably outweighed by the disadvantages, and that eventually our trade, the Canadian manufacturer and the public interest will suffer.

We feel, therefore, that it is reasonable to seek some form of legislative assistance to protect the general economy against the ill effects of the practice.

8. Recommendations

We wish to place ourselves on record as supporting the recommendations of other interested parties who have appeared before the Commission requesting the elimination of the present legislation prohibiting end pricing by the manufacturer. This Association is of the opinion that it would be in the public interest to rescinding Section 34 of the Combines Investigation Act.

2. Alternatively:

It is our view that the present scale of loss leader selling, while serious and having decidedly detrimental effects on the retail

hardware trade as well as on the economy as a whole, is at present in an early stage of development. At present it is more apparent in densely populated areas. We believe that it will become more widespread and the undesirable effects will be intensified. Therefore, failing a restoration of the former law permitting re-sale price maintenance, we respectfully submit that some partial alternative should be sought by the government in the public interest.

We believe that one possible solution may be found by amending the Combines Investigation Act by adding provision for the Minister to take discretionary action when the public interest warrants. We feel that such provision might be made by an amendment to the Act reading somewhat as follows:

"Notwithstanding anything contained in this Act, when, on a report from the Restrictive Trade Practices Commission, the Minister is of the opinion that any goods are being sold, advertised, or offered for sale by any vendor or vendors in a manner detrimental to the public interest, the Minister may authorise a manufacturer, distributor, supplier or importer to withhold delivery of such goods to such vendor or vendors for such time as the Minister deems necessary."

We believe that granting such discretionary power to the Minister is not without precedent: In Section 35(6) of the Customs Act Parliament has given the Minister of National Revenue authority to determine and declare the value for duty of imported goods, which, in his opinion, have not been invoiced at their normal price; in Section 31(1) of the Excise Tax Act Parliament has given the Minister of National Revenue authority to determine the value for tax in respect of goods manufactured or produced in Canada under such circumstances as render it difficult to determine the value thereof.

We acknowledge that the proposed amendment would require extensive care in drafting. Nonetheless, we believe that it would give Canadian industry an opportunity to seek assistance and protection against the ill effects of loss leader selling.

For example, we visualise a Canadian manufacturer whose brand name product is being consistently bandied as a loss leader and who, as a result, is confronted with reduced sales, production, and employment. Under these circumstances such a manufacturer would be able to submit all the facts to the Minister; at the same time the dealer or dealers complained of

could file a counter argument. The onus would be on the complainant to satisfy the Minister that the public interest was in jeopardy. If he discharged this onus, the Minister may then authorize him to withhold his merchandise from such named dealer or dealers and/or distributor or distributors.

We respectfully submit this proposal for the consideration of the Commission.

3. We have a final, unrelated recommendation.

When Parliament enacted Section 34 of the Combines Investigation Act, effective January 1, 1952, it created problems for small businesses and trade associations which were perhaps not envisaged by the legislators at that time.

These problems arise out of the present uncertainty of the correct interpretation of the law. Frequently, small businessmen are required to seek legal opinions which involve considerable expense. Unfortunately, opinions received are often so contradictory as to prove valueless, and the small businessman and/or trade association is left no better off than when he started.

We believe that Parliament should empower the Restrictive Trade Practices Commission to hear matters submitted to it by business interests, and to express an interpretative

opinion as to the legal position of any person seeking such opinion. We are not necessarily proposing that the Commission should function as a Court of Record, but do believe that the Commission should be authorized to function as a lay tribunal something along the lines of the Tariff Board or the Income Tax Appeal Board, to which the small businessman or association may turn, without cost, for an authoritative opinion as to the interpretation of the present law governing re-sale price maintenance and for guidance as to his position in respect of the law.

All of which is respectfully submitted.

THE CHAIRMAN: Do you wish to comment on anything in the brief at this stage, Mr. Gilmour?

MR. GILMOUR: Actually, no, I have no further comment, Mr. Smith, other than that I think we have tried to outline our views as much as possible in our brief. However, if there are any questions we will be happy to do our utmost to cooperate in trying to answer them.

THE CHAIRMAN: There probably will be some questions. I thought perhaps you might want to make some explanation, or some other members of your committee.

MR. GILMOUR: I possibly would like to

refer back to the table, to which earlier reference was made during the presentation of the brief.

Actually, gentlemen, if you will look at your copies of it, you will see in the top column there, in red figures information which shows to the best of our knowledge, the cost to our hardware dealers. Then, listed below you will see a number of names, which were advertisers in the different Toronto newspapers, and also the dates upon which the advertisements listed appeared. Then, opposite the dates that these advertisements were made by the respective dealers are listed the prices at which the merchandise was advertised. And I think when you look at it -- well, take the first column, if you like, which refers to a Mixmaster, where the average retail hardware dealer's cost is \$40.58. If you will look down the first column, you will not find any one instance where the article was advertised at the retail level over \$40.

That carries through with the rest of these figures in here. They vary, some are up and some are down. In the great percentage of cases these figures, at which the merchandise was advertised, are less than what the hardware dealer had to pay for them to obtain them.

THE CHAIRMAN: Do you know, Mr. Gilmour, what price these particular dealers had to pay for a Mixmaster and a polisher or a kettle and so on?

What I am thinking of is that these merchants who appear to be advertising at these rates all seem to be, as near as I can recall, people who are doing a pretty substantial volume of business. I am wondering if they pay \$40.58 for a Mixmaster, or if they get it at a lower rate, and whether you have any knowledge about that.

MR. GILMOUR: Well, I cannot say what these particular gentlemen pay for their merchandise, but I do know that the figures in red are what our retail dealers have to pay for the merchandise.

Now, as I understand it, these items here, for instance -- you will notice there is an item with the letter (s) after the red figure. That indicates a single purchase, a single item. Then, you will notice that the other ones have in brackets the numbers 3, 4 and 6 as the case may be, and it is my understanding that, regardless of the quantity to be purchased from the companies, that that would be their rock bottom price. The rock bottom price that we could obtain the merchandise for.

THE CHAIRMAN: We had one of these people before us in Toronto who indicated that he had handled, I think it was, the G.E. polisher in pretty large quantities, and at one time he had advertised, if I recollect correctly, at \$32.85, as his rock bottom. We asked him if he lost money on it, and he hesitated -- he started to say that he might have

lost a little bit, and then he did say, "No, I got a special price on that, and I made a little money on it."

Now, that is the kind of statement we are trying to get to the bottom of -- because if these people have means of acquiring these articles at a substantially lower price than your people pay, it may be that they are not loss leaders to them.

MR. GILMOUR: Did he submit any proof as to what his costs on the items were?

THE CHAIRMAN: He did not produce invoices with regard to that, no. He did say that he had got a special buy, so that he did not actually lose any money, even at that price.

MR. GILMOUR: Then, that would be in the category of a special, a quantity of clean-out or distress merchandise would it not? He maintains that he got a special buy. Would that not be that that was a special instance in which he bought that merchandise?

THE CHAIRMAN: I do not know just what the special circumstances were. It may have been that he was buying out a surplus stock in the hands of the wholesaler. That might be.

MR. JOHNSON: It might have been that it was just a dodge. He was not able to produce proof, and he hesitates, as you say, to commit himself that he had sold at a loss.

THE CHAIRMAN: He left the clear impression with us that he did not always pay the same price for the goods that he would be selling, and that, generally speaking, his price would be higher than that. But he also left the impression that on this occasion he said it was not.

MR. GILMOUR: Speaking along that line, as I mentioned at the beginning, I was in the retail business until September 1, operating my own business. Under date of May 25, 1954 the Toronto Daily Star advertised Canadian General Electric polishers at the price of \$33.95.

On May 25 I phoned to the company and I asked them for their price on 100 of the floor polishers, and they told me that their very best price they could give me was \$35.43, less 2 per cent charge discount. I said, "Is that the rock bottom price on any quantity?" And he said, "I don't care whether you buy 100 or 5,000, that is the best price I can give you."

THE CHAIRMAN: Is that the General Electric Company itself to whom you were talking?

MR. GILMOUR: Yes, the General Electric Company itself.

THE CHAIRMAN: Do you usually buy from that company, or from a jobber?

MR. GILMOUR: So far as the General Electric merchandise is concerned, I bought from them, because

I was their agent for the community in which I operated.

But that meant that, regardless of the quantity, whether I bought 100 or bought 5,000, I could not meet that price. I would lose 79 cents, plus everything else -- plus transportation and everything else -- to my place of business.

THE CHAIRMAN: Do you know what price the jobber, let us say, in Toronto, would pay for that polisher?

MR. GILMOUR: What the jobber would pay?

THE CHAIRMAN: Yes, what the jobber would pay to the company?

MR. GILMOUR: No, I don't know what the jobber would pay.

THE CHAIRMAN: You, in buying direct, were apparently getting -- or were apparently being charged the same price as the jobber would charge the retailer, is that not correct?

MR. GILMOUR: Yes, that is right.

THE CHAIRMAN: And the jobber would have to have a certain discount in order to do business. In other words, the General Electric Company price to the jobber would be below the price to you? That is, on a direct sale?

MR. GILMOUR: The jobber, yes -- should be, for the jobber to make his margin of profit.

THE CHAIRMAN: The jobber would not be in

business very long if he did not have something to work on.

MR. GILMOUR: That is right.

THE CHAIRMAN: But you are not able to say what the jobber's price would be?

MR. GILMOUR: No, I am not prepared to say; I cannot say.

THE CHAIRMAN: It seems to me that in many of these cases the retailer buys from a jobber and it might be in some of those cases that, very occasionally, he gets a special buy -- I don't know.

MR. GILMOUR: Our members would be such, on the average, that they would not be in a position to buy as jobbers. They are so small -- too small -- and they would not be in a position to buy a sufficient quantity to be classified as jobbers or semi-jobbers.

THE CHAIRMAN: No, but what I am thinking of is this, that a jobber who gets a special discount from the price which the retailer would be expected to pay, may be well stocked up. He might find as the season is going along that he is not selling his stock as well as he had hoped to sell it; and if a fairly large retailer came along he might give him a special price, to unload a substantial part, or even all of his surplus stock, and in that case the retailer might get a better price than he would otherwise.

MR. GILMOUR: That would be possible, but--

THE CHAIRMAN: That sort of thing could happen?

MR. GILMOUR: But, for the length of time that this practice has been going on, there must have been some tremendous stocks in jobbing houses.

THE CHAIRMAN: I would think there must have been a number of them at one time or another. Apparently a lot of them have been sold, in any event. Is there any other member of the delegation who wishes to make any comment, or to add anything at this stage?

MR. CAWKER: I might add a word in reference to one of these consistent advertisers at distress prices, in our estimation. Their place of business is within five doors of one of my stores, and it has meant that in the small traffic appliances, such as ironers, toasters, fans, and what have you, our sales have -- well, for all practical purposes, they are practically nil on those commodities, now.

THE CHAIRMAN: And you are referring to --

MR. CAWKER: I am referring to the New Era.

THE CHAIRMAN: They are continually selling them at those prices?

MR. CAWKER: They are continually advertising at prices which we cannot compete with -- we cannot nearly compete with. Their resale prices advertised

in the window, I would say, right at the present time, are within 10 cents per unit of our laid-down cost. And I think we buy reasonably well.

We have three outlets, and we can buy reasonably well. But we are not in a position to nearly compete on these traffic appliances. We do not carry the major appliances; but on the traffic appliances, we are just dead beat on these items.

MR. FAVREAU: In the case of such advertisements of prices very close to those which you buy yours, as a dealer, have you had occasion to check whether these advertisers were really substantially stocked on these articles, on this merchandise?

MR. CAWKER: I think that in this particular company you can obtain the merchandise. We have had instances where there nailed down products -- they are advertised at distress prices, and when the customer goes to obtain them they cut off. But in this particular case, they can obtain the goods, yes.

MR. GILMOUR: When I said, in our brief, that this practice has not cleared up, I would say that I have with me here a copy of the Toronto Telegram of Monday, September 13, in which they are advertising General Electric irons and kettles at \$8.95. We also have with us, here, proof of advertisements since back in April. So I mean to say that we wish to prove the point on that, that this

is a continuing practice by those who are practising this type of merchandising. This paper is September 13, and this advertises merchandise at the same price as what it was being advertised back in April. So the practice is definitely a steady practice.

THE CHAIRMAN: Then, if none of the delegation wishes to add anything further, perhaps Mr. Wickwire would wish to ask some questions.

MR. WICKWIRE: I have a few questions, yes. Now, Mr. Gilmour, you have referred to the schedule on the unnumbered page of your brief, following page 2.

MR. GILMOUR: Yes.

MR. WICKWIRE: And the advertisements appearing there in the Toronto daily papers. You have set out near the top, the hardware dealer's cost of, first of all a Mixmaster, at \$40.58. I take it that is a Sunbeam Mixmaster, is it?

MR. GILMOUR: Yes, it is.

MR. WICKWIRE: What is the suggested selling price of that Mixmaster?

MR. GILMOUR: \$58.95.

MR. FAVREAU: It is \$58.95?

MR. GILMOUR: That is correct.

MR. WICKWIRE: And what is the suggested selling price of the G.E. polisher, the next item?

MR. GILMOUR: The G.E. polisher?

MR. WICKWIRE: For which the dealer's

cost singly, is \$38.15.

MR. GILMOUR: It is \$54.50.

MR. WICKWIRE: And what is the suggested selling price for the G.E. kettle which costs the dealer, singly, \$9.45, and in lots of four it costs \$8.78?

MR. GILMOUR: \$13.50.

MR. WICKWIRE: And the G.E. iron which, singly, is \$9.07 and in lots of six is \$8.42?

MR. GILMOUR: It is 12.95.

MR. WICKWIRE: And the suggested selling price for the G.E. Junior Mixer -- what is that?

MR. GILMOUR: Yes, the Junior Mixer.

MR. WICKWIRE: The single dealer's cost is \$17.47, and in lots of three it is \$16.22.

MR. GILMOUR: The suggested retail on that is \$24.95.

MR. WICKWIRE: And the G.E. pop toaster, on which the single price to the dealer is \$19.25, and in lots of three it is \$17.88.

MR. GILMOUR: It is \$27.50.

MR. WICKWIRE: And the Westinghouse steam iron which costs the dealer, singly, \$14.65 and in lots of six costs \$13.80 --

MR. GILMOUR: It is \$21.95.

MR. WICKWIRE: Now, the Chairman referred to you at the end of your brief, a statement by a gentlemen who was heard in Toronto before the

Commission with reference to the G.E. polisher. That gentleman, I think, was Mr. Charles Lewis of New Era, who is listed in your schedule. And on the G.E. polisher it shows the lowest price at which that article was sold by New Era as being \$32.95. I think that is correct, is it not, Mr. Gilmour. It only appears once at \$32.95. It is the third item down under New Era.

MR. GILMOUR: That is the polisher?

MR. WICKWIRE: Yes, the G.E. polisher.

MR. GILMOUR: Yes, under the date of May 3-- the Toronto Daily Star.

MR. WICKWIRE: And at \$32.95?

MR. GILMOUR: That is right, yes.

THE CHAIRMAN: It appears once again at \$32.95.

MR. GILMOUR: Yes.

MR. WICKWIRE: And in all other instances it is over \$33.

MR. GILMOUR: That is right.

MR. WICKWIRE: Then, on page 652, volume 5 of the transcript of evidence given by Mr. Charles Lewis of the New Era Home Appliances Limited it reads as follows:

Mr. Lewis: Yes. Now we sell them every day --

That is, he is referring to the G.E.

polisher --

--- at \$37.75 is our every day selling price. When we run a large ad, 100 floor polishers at \$32.95.

Mr. Wickwire: What does that floor polisher cost you?

Mr. Lewis: You are putting me on the spot now, sir, because you see, I will say with the average dealer it costs \$35.40 -- that is, \$35.43, as compared with ours.

and then he continues --

--- but I do get them for less buying them in large quantities. In case there is a G.E. man here and they know my source of supply -- I don't want to cut off myself of supply.

Mr. Wickwire: In how many cases have you sold them below your laid down cost?

Mr. Lewis: Oh, not very often. I just picked on that one item, floor polishers. I will say, lately, even at \$32.95 I am not losing money.

Mr. Wickwire: You are not?

Mr. Lewis: No, I am not losing actually because I buy them in very large quantities.

I think that was the evidence to which the Chairman referred. Have you any comment on that?

MR. GILMOUR: My only comment on that is the remark I made a moment ago, from my own personal experience in trying to obtain floor polishers.

MR. WICKWIRE: Yes.

MR. GILMOUR: In which I personally -- and I operated my own business in Carleton Place which is only 35 miles away from here, and I phoned to Ottawa, the General Electric Company here in Ottawa, and I was told that it did not matter whether I bought 100 or 5,000, that that was the only price I could get.

Now, I cannot conceivably think that Mr. Lewis or anybody else, any other organization, will buy that particular item in lots of more than 5,000 units.

MR. WICKWIRE: He was talking about lots of 100 or over, I think. Apparently he had a source of supply.

MR. GILMOUR: It is possible he could have had -- I don't know. But I certainly could not figure it out, how he could do it.

MR. WICKWIRE: Now, I am going to refer you to evidence also given before the Commission in Toronto, the same volume -- volume 5 -- page 777.

This was in the brief submitted by Eddie Black. He is one of the advertisers listed in your schedule.

MR. GILMOUR: Yes.

MR. WICKWIRE: And he appears one or more times. According to your schedule he sold the G.E. polisher at \$33.75. That was on April 29, is that correct?

MR. GILMOUR: Eddie Black, the Globe and Mail, April 29, \$33.75 -- yes, that is right.

MR. WICKWIRE: And on the same date advertised the G.E. iron for \$8.95?

MR. GILMOUR: That is right.

MR. WICKWIRE: Now, I take it that Eddie Black Limited is known as a cut-rate house, is it -- or a discount house?

MR. GILMOUR: I don't know -- perhaps Mr. Cawker could answer that question better than I can. I am not familiar enough with the city of Toronto.

MR. CAWKER: Mr. Chairman, I do not believe that the company mentioned by this gentleman is noted as a particularly cut-rate house. It seems that in several instances in the city of Toronto these deep-cut prices have been started by names that are on this schedule here; and other companies, such as Eddie Black, have apparently had to adopt the same policy.

MR. WICKWIRE: Well, perhaps not a cut-rate house -- but do you prefer to call them a deep-cut house?

MR. CAWKER: No, they are not, originally -- no. They were quite ethical, originally, in our estimation, up until just recently.

MR. FAVREAU: He told us that he was against the practice, but that he was dragged into it.

MR. CAWKER: Yes, that is it; that has been the situation.

THE CHAIRMAN: In that connection, there was an ad by another of these stores on the same article just the day before, at the same price of \$33.75. That might have been the reason for his doing it.

MR. WICKWIRE: That might have been the stimulus.

THE CHAIRMAN: Yes.

MR. WICKWIRE: Then, on page 777 of the transcript I find this in the brief presented by Eddie Black:

We believe cut-rate houses are a benefit to the public, by reason of the low prices which result on brand-names, and render a service to the manufacturer because usually they are an outlet to move large quantities of inventory or declining models. In any event, the manufacturer still gets his full market price. Another reason for the growth of the "cut-rate" house is the attitude, we

believe, of the retailers themselves. Very few business men in the electrical appliance business have made the adjustment from "wartime sellers market" with its shortages and high prices, to the existing "buyers market". Instead of shaving profits to give consumers the benefit of the enormous post-war manufacturing and volume of sales, many dealers are concerned today, over the loss of sales, and this loss is a result of their own insistence on keeping retail prices high. Retailers we believe must accept the fact that, whether good or bad, "cut-rate house" is here to stay. They have touched off a change in retailing that cannot help but lower the prices to Canadian consumers and to compete with them the department stores and other dealers have the onus of cutting down the heavy distribution costs, and of getting the manufacturers products from the manufacturer to the consumer at a lower price.

Now, would you care to comment on that passage taken from the submission of Mr. Eddie Black?

MR. CAWKER: May I comment upon it?

MR. GILMOUR: Yes.

THE CHAIRMAN: Yes, Mr. Cawker, you may comment.

MR. CAWKER: It seems to me that, having been in business for a long period of time along with these other gentlemen, that it is just not horse sense to say that a man can sell merchandise at cost. There is your profit and your expense incurred in those items somewhere. If I sell a General Electric kettle at cost that profit that I ordinarily would make on that kettle has got to come in somewhere else. There are costs involved in doing that.

And, so far as the public is concerned they might gain on that particular item; but, somewhere else in my store the profit on that kettle is hidden. It has got to be. Because the cost of doing business is such that you cannot sell merchandise at or below cost. It has got to be concealed somewhere else. It is just horse sense that that must be so.

THE CHAIRMAN: You cannot sell all your merchandise below cost, that is a certainty.

MR. CAWKER: No, certainly not.

MR. WICKWIRE: Of course not. But, Mr. Cawker, there have been suggestions made before this Commission that, on brand name articles, such as are listed in this brief, that the suggested retail price is unrealistic, and that it is too high, and that by reason of the fact that it is too high it has opened the door in these so-called loss leader practices. Would you care to comment

upon that?

MR. CAWKER: I do not agree with that, because, having been in business for a period of 30 years, I know that you have certain costs involved in doing business. And, taking it on an average, you have to have a certain percentage of markup in the hardware industry, in the retail end of the hardware industry. And I don't think the ordinary discounts that apply to the average hardware retailers throughout Canada are exorbitant. I do not agree. I maintain they are reasonable and just.

MR. WICKWIRE: Do you agree that some dealers' costs are much higher than those of others -- their costs of doing business?

MR. CAWKER: Well, according to D.B.S., there is not too big a spread there.

MR. WICKWIRE: As I understand the D.B.S. figures, there is quite a wide range in costs. So that the average does not really give you the true picture.

MR. CAWKER: There, again, your profit margin varies, too; because your larger dealer, as intimated in the evidence you have just read to us -- on certain purchases of merchandise he will get a preferred discount. But, therefore, if the larger retailers, the larger retail outlets, have larger selling costs, or costs of doing business, it is taken care of in the larger extra discount that they

buy merchandise at.

MR. WICKWIRE: Some of them also seem to be making a profit selling -- some of these so-called houses -- seem to be getting along with a profit selling large quantities at reduced prices.

MR. CAWKER: I still maintain that some place along their sales that profit that they have sacrificed on some of those items is hidden. It has to be.

MR. WICKWIRE: You have heard of the Ontario Association of Radio, Television and Appliance Dealers, Incorporated?

MR. CAWKER: I have heard of them, yes.

MR. WICKWIRE: At a meeting passed by 142 Toronto dealers, in St. Margaret's Hall, April 28, 1954, these resolutions were passed:

(1) It is the opinion of the dealers present where list prices are too high that the manufacturers immediately adjust their suggested list so as to bring back to the buying public some semblance of value so that cut-price dealers cannot show such a difference between the manufacturer's suggested list and their selling price.

I take it that you would not agree with that?

MR. CAWKER: I do not agree, no.

MR. WICKWIRE: Nor your association?

MR. CAWKER: I still think -- and I am speaking of the average merchant again -- that his percentage of markup in these articles under discussion, backed by the service -- the good service that the average dealer is supposed to give on brand name merchandise -- that the profit margin is not exorbitant. But on the other hand -- and I think we have possibly some evidence of this -- some of these so-called cut-rate retailers that we have listed on this schedule here, at times are not giving service on these loss leader items.

MR. WICKWIRE: I think that is correct, Mr. Cawker. But does not the customer get his choice of whether he paid extra for the service, or not?

MR. CAWKER: When you or I or anyone else buys a General Electric kettle, whether we pay \$14 for it or \$4 for it, if it is new, we assume --

MR. WICKWIRE: That it will not require service?

MR. CAWKER: That a definite guarantee goes on that article.

MR. WICKWIRE: And also, I would assume on a G.E. kettle, that it would not require service.

MR. CAWKER: Well, they do, at times; but we assume that it will be taken care of, and no questions asked, by the party from whom we bought that kettle.

MR. WICKWIRE: That would also apply to an iron, I take it.

MR. CAWKER: That is correct.

MR. WICKWIRE: But different considerations would apply to a TV set?

MR. CAWKER: Not necessarily, no. If it is a good brand name of merchandise, I do not think it should.

MR. WICKWIRE: Well, I think there is evidence that on an article such as a TV set it needs certain adjustments in order to get it working properly.

MR. CAWKER: Well, I cannot speak with any authority about TV, because we do not carry it.

MR. WICKWIRE: But the so-called traffic appliances need very little service?

MR. CAWKER: Well, I would not go along with that; some of them need considerable.

MR. WICKWIRE: But they are all guaranteed by the manufacturer?

MR. CAWKER: That is right.

MR. WICKWIRE: Then, this is the second resolution:

We suggest that the manufacturers change the present plan of selling to the dealer at "under the table" dealers.

Secondly, that when the manufacturer gives a special price to any one dealer,

the same price should be offered by the manufacturer to his other dealers, providing they take a reasonable number of machines and not make the quantity so large that the legitimate dealer cannot participate in the price reduction, or put the legitimate dealer on a retroactive basis whereby he can go out and make some money in competition with the large buyer. This would give him some incentive to enlarge his business and eventually he would make a large buyer.

Do you agree with that?

MR. CAWKER: I agree with that; but he is still not sacrificing his margin of profit.

MR. WICKWIRE: Now, perhaps Mr. Cawker, on this question of service that you have mentioned, the cost of giving service would also add to the cost of the article, I take it?

MR. CAWKER: Yes.

MR. WICKWIRE: Is there any room for the two methods of merchandising (1) of merchandising an article without service, under which the customer can take his chances and (2) merchandising the article with service, with emphasis on the service, whereby if anything goes wrong he goes to any of you gentlemen as dealers and says, "Fix it" for which you make a proper charge?

MR. CAWKER: I can see the possibility

of that schedule; but I can also see a lot of confusion regarding the sales policy which would have to be set up by your manufacturer. And your advertising or your stipulation at the time the sale was made -- it would have to be clearly understood by your customer at that time so that it would not add to the confusion. If that were not done, it would add to the confusion, and you would not know whether the article was guaranteed or whether it was not.

MR. WICKWIRE: There may be some difficulty about it, but that is a possibility; there is that possibility of having two distinct types of merchandising?

MR. CAWKER: Yes.

MR. WICKWIRE: Do you know a journal which is called the Trade Builder, which concerns radio, television and appliances? I believe it is published in Toronto.

MR. CAWKER: Well, when you talk about TV and service, I think perhaps Mr. Johnson of Grimsby could answer best.

MR. WICKWIRE: And appliances.

MR. CAWKER: He is better qualified to discuss those matters than I am, because he is a service man for General Electric, and also sells TV. So if you will ask him those questions, perhaps it would be better.

MR. WICKWIRE: Then, Mr. Johnson, do you know about this journal?

MR. JOHNSON: Well, I know of it, but I don't know a great deal about it.

MR. WICKWIRE: I have a photostat copy from the August 1954 issue of the Trade Builder, in which it is suggested as follows:

It is possible therefore that the public may find two types of dealers, those who take a personal interest in their needs and problems and assume responsibility for the satisfactory operation of the purchase, and those who offer merchandise at a lower price with the understanding that the customer is more or less on his own.

MR. JOHNSON: I think we have that kind of business now, but not legitimately. It is taking place. The articles are supposed to be guaranteed, but they are ignoring the service. I have had a number of instances -- well, I might explain that I have a service depot in my town. I do not mind telling you that to run this service in a town like Grimsby costs a lot of money. But I make it a definite point to give service. I feel I am giving a service to that town if I look after my customers, and it does cost me money.

I have had a number of instances where

articles have been purchased out of town and at these prices which are listed right here, and they have come back to me to be serviced, because the other fellow just would not do it.

MR. WICKWIRE: And for which you can make a charge?

MR. JOHNSON: Yes, but the General Electric Company have a flat rate charge, and to do the other fellow's dirty work does not pay me in any shape or form. If I sell an article originally, then as a service depot I get a dollar, to do a job which probably costs more than that. I sell the article, and I am here to give service on it. But when I have to do it for the other fellow it does not pay. I would be far better to get out of the service business, and do the same thing as he is doing.

MR. WICKWIRE: Why can you not charge for it?

MR. JOHNSON: Because, as a franchise dealer I have agreed with General Electric for service at a certain flat rate. And in that instance -- if you wish me to give the name and address of what happened -- this was in connection with a TV set. These people purchased a TV set, and it was purchased from Brockton Tire and Radio Company at 1617 Danforth Street West, Toronto.

MR. CAWKER: It was Dundas Street.

MR. JOHNSON: Oh yes, Dundas Street. It was under guarantee. They had trouble with the TV set, as you have said. Then, as has been pointed out, this set required to be adjusted in the home. However, they just picked it up and brought it home and set it up, and it just did not work -- or if it did work, only worked after a fashion.

Well, they called us in. On the first visit, it just so happened -- and if any of you gentlemen have any TV sets you will know that this does happen, that you call someone in and by the time he gets there the darn thing is going again. In this case it was going, and I made the trip at no charge to the customer, because it was going.

However, in the matter of a day or two we were called in again on that trip. Incidentally, I had an understanding with them, that so far as service was concerned, we would do it, yes, but naturally we would have to charge them for it. And it amounted to \$14.60 for these items -- four tubes, and adjustment and so on, which came to \$14.60. I gave them a receipt and said if they wished they could present it to the dealer, and if the people who gave the guarantee wished to honour it, it was up to them.

MR. FAVREAU: Were not the tubes guaranteed? By the company?

MR. JOHNSON: The tubes were under warranty,

yes, which I eventually did send back and get the credit on them. But, in the first analysis, this was the charge made. And, incidentally, I had the trouble of taking those tubes and tagging them, and returning them to the company and getting, not the retail price for them, but getting a replacement for them.

In the second place, that is from June 24 to August 12, I was called back again, and it was another tube had gone and there was another charge of \$5.70.

Now, I telephoned this customer last Friday and asked them if they had presented these bills to the company from which they had purchased the television set, and they said they had. I said, "What was the reply?" They said, "We have not had any reply" -- and apparently that they had sent two or three letters in the meantime trying to get some satisfaction, and they could not even hear from these people, let alone get any credit for the service.

MR. WICKWIRE: Well, I presume these people -- you have been referring to the dealer who sold them?

MR. JOHNSON: Yes.

MR. WICKWIRE: And did that dealer sell the machine with service or without service?

MR. JOHNSON: According to their statement

it was under guarantee. According to the statement of the customer it is under guarantee.

MR. WICKWIRE: For how long?

MR. JOHNSON: Usually on television it is three months.

MR. WICKWIRE: There must be some charge made for that three months? Is there not some charge made for that service?

MR. JOHNSON: No; when I sell a TV set, at any price, list or no list, I am required to provide free labour service for three months, on that condition.

MR. WICKWIRE: For three months?

MR. JOHNSON: Yes.

MR. WICKWIRE: Does that apply to all makes?

MR. JOHNSON: It is quite general, yes.

MR. WICKWIRE: In some cases I believe it is only one month?

MR. JOHNSON: I do not know of any such arrangement of that. I have heard of it being for a year -- but in that case the dealer takes that upon himself when he says that it will be a year. But I think almost all the manufacturers guarantee the product inside the set for three months, which is replaceable, and the dealer who sells the article is supposed to supply the labour -- which I do when I sell a set.

MR. WICKWIRE: Supposing a prospective customer is told at the time of purchase of an article-- let us say it is a TV set -- that I, as dealer, am going to sell it to him at so much off the suggested list price, and that he will take his chances on service, is there anything inherently wrong with that?

MR. JOHNSON: I would say that he, of all people, would be most unhappy, if something happened to it.

MR. WICKWIRE: But he is taking his chances. He is getting something off the price, because he takes his chances on the service. If he is informed about it, is there anything inherently wrong with it?

MR. JOHNSON: Yes, I think there is. There is something wrong with failing to service anything new that is sold. I probably can answer that best in this way, because I have occasion to sell used sets, which I do not guarantee.

MR. WICKWIRE: Reconditioned by your firm?

MR. JOHNSON: Yes. And yet, if anything happens within a reasonably short length of time, I certainly do not look after it, because I have not undertaken to do so, and they are most unhappy. Regardless of that, there is the fact of the bargain which appeals to them at the time, and the fact that they have to turn around and spend more money within a reasonably short length of time does not appeal to them.

MR. WICKWIRE: While you and your association do not like selling any appliances without service, do you admit that the practice is going up more and more all the time -- the two types of merchandising?

MR. JOHNSON: I don't know of any case where they are selling -- that is definitely selling-- and telling the people that they do not guarantee. I think that in any cases I have bumped into, they have been on the assumption that the article was guaranteed. I know of another TV set in that category.

MR. WICKWIRE: In that case you are saying it was deceitful -- the case to which you referred?

MR. JOHNSON: I would say so, yes.

MR. WICKWIRE: But if the prospective customer was actually told that he would have to take his chances on the service, and that if he required service he would have to pay for it, there would be nothing wrong in that, would there?

MR. JOHNSON: Yes, I would say there is something definitely wrong, unless he put it in black and white. Because hearsay is still good; but the customer does not remember that.

MR. WICKWIRE: Then, let him put it in black and white.

MR. JOHNSON: If you put it in black and white, the dealer would be in the clear -- but the

customer would still be unhappy.

MR. WICKWIRE: Of course the customer bought the articles in the first place at a considerably reduced price.

MR. JOHNSON: Yes, but of course I am interested in the end happiness of the customer.

MR. GILMOUR: May I comment upon that?

MR. WICKWIRE: Yes.

MR. GILMOUR: Although the pattern and the trend may be developing along that line, I definitely feel that chaos is the ultimate end. First of all, you will have discrimination among dealers. For instance, if you are selling a piece of merchandise for which you give absolutely no guarantee, and you are selling that article for \$5, and I am selling the same article for \$5.75, there is a difference of 75 cents. It is only human nature that the person will buy where he finds the cheapest price. He is not thinking about the end result.

MR. WICKWIRE: That is inevitable, I guess, is it not?

MR. GILMOUR: Well, it is human nature. So that when we go into talking along these lines, I say that the ultimate end would be chaos for merchandising. It could not be otherwise, because you are human and I am human, and I think that if you can save \$10 you will walk to the end of the hall, will you not?

You have been talking about kettles. Well, I have a General Electric kettle priced at \$13. There is another kettle down the hall priced at \$5 -- there is a difference of \$8. Well, you and I, and John Q. Public walk in there and we see that price -- you see my price, and you walk down the hall and you see that price down there. That \$8 or \$5, or whatever it may be, looks awfully big at the time you are making your decision to buy. And you might possibly buy without service, and I might possibly buy with service. But who is going to be best off in the end, that is the point?

MR. WICKWIRE: A lot depends upon what I buy, I suggest.

MR. GILMOUR: But on a piece of quality merchandise, which we recognize as being quality merchandise, it is not the same as food or tobacco which is consumed within a day or two. This is a different matter altogether.

MR. WICKWIRE: But if I buy a nationally known brand of hardware merchandise, such as a G.E. kettle, for instance, or a floor polisher, or a Westinghouse steam iron, or any of those articles -- I might be perfectly willing to take my chances on its getting out of kilter at the time I buy it for \$2 or \$3 less than you offered it.

MR. GILMOUR: That is quite correct.

MR. WICKWIRE: On the other hand, I might

be the type who has dealt with you for a good many years, and will always deal with you, because I know you give good service and, I might be willing to pay more because I know you and because I know your reputation. I know that if anything happens to go wrong, you will look after me.

MR. GILMOUR: But if that merchandising practice is allowed to continue, how can any merchant build goodwill and build confidence? After all, a man buying an article has got to have confidence in the merchandising setup. If that pattern is allowed to develop and to expand, the public would have absolutely no confidence in anything they bought from any of the merchants who were selling to them.

MR. WICKWIRE: But there would still be, would there not, a large proportion of the public who would still want to deal with people like yourself, and members of your association?

MR. GILMOUR: Definitely -- but a dollar is a dollar.

MR. WICKWIRE: Well, that is just the point. It is the customer's dollar that everybody is looking for.

MR. GILMOUR: We, as merchants, feel that the customer's dollar is necessarily part of our institution. But, at the same time, as I said before, human nature is such that we do not feel that we can beat human nature -- and that is what will happen.

THE CHAIRMAN: Mr. Gilmour, we had before us in Montreal a dealer who stated, that as a result of his experience, he found that there were a number of manufacturers of electrical appliances whose products had become so well established in the public mind that they were content to rely upon that manufacturer as producing good articles, and that in a great many instances they would not ask for service. They said, "It is General Electric -- or Marconi or Frigidaire and we know that this company makes good things. We are not concerned about service." Do you think that happens now very frequently? He said that happened to him very frequently. But he did say, however, that he did provide service where people needed it, but that with regard to a great many articles there was very little service required, and that if a major job was needed, he did not have enough men to do it -- to carry out any great amount of repair work, to do a lot of that sort of thing. If a major job of repair work was required, he took the article back and gave them their money back, or gave them a new article, as the case might be.

I was wondering, if, in your experience that tendency on the part of the public has shown any sign of developing -- that is, of a feeling that, as regard to certain types of articles, the public feels, "Well, they are good articles, and

we do not need any special guarantee of service on them."

MR. GILMOUR: I do not think in my experience, that operating in a community close to Ottawa, in a good Scotch community, that I can sell any merchandise to anybody and feel reasonably sure that they are going to be entirely satisfied if they do not feel that I, as a reputable dealer, will back them up and service the merchandise I am selling.

MR. CAWKER: Mr. Chairman, I see your point, there. But while your customer buys your General Electric kettle or your Westinghouse iron, and assumes at the time of purchase that this article is not going to need any service, within a year or within the period of the guarantee that article may need service -- and then he will hop back to where-ever he has purchased it, and he will expect that service.

THE CHAIRMAN: But, what this dealer said was that the likelihood of that was so unimportant with regard to the products of some companies that his customers did not worry about it. And I know that in my own experience, in the past number of years we have bought a certain number of traffic appliances, and I cannot recall a single instance in which we ever required service during that period in which we would have got it free of charge.

MR. CAWKER: You do not worry about your

service until you need it.

THE CHAIRMAN: I know that. But if your experience is that you have not needed it, then the chances are you will think that the products of the company from whom you have been buying are pretty reliable.

MR. JOHNSON: Well, Mr. Chairman, we have a lot of small appliances which carry good names -- Westinghouse, General Electric and so on -- which come back during the period of the guarantee regardless of how good those articles may be. There are some defects -- whether it is a Cadillac or a Ford or an electric iron or a tea kettle, there will be defects.

THE CHAIRMAN: There is one question, Mr. Johnson, which arises out of the particular case you mentioned, the television set. I am just trying to see how far the service element goes in the minds of your dealers. Was this purchaser living in Grimsby?

MR. JOHNSON: Yes.

THE CHAIRMAN: And he purchased in Toronto?

MR. JOHNSON: Yes.

THE CHAIRMAN: Is it customary for a retailer to provide service as far away from the place of sale as that?

MR. JOHNSON: Well, he either should do that or arrange with a dealer in that town to do

so. I have had some cases where a television set was sold in Toronto, and they have made arrangements with me to carry on the guarantee for them.

I have for example, on television and other items -- but for the moment I am talking about television -- I have turned down sales of television sets in places too far away by telling them, "I cannot service that for you and I think, in all fairness, you should purchase it where you will get the service"

Perhaps I am too conscientious about it. But, if they sell 100 or 50 miles away, they should be prepared to do something about it.

THE CHAIRMAN: Well, I am not getting at what they should do; I am asking about the customary practice.

MR. JOHNSON: Well I would say the customary practice is that they ignore it.

MR. McOUAT: Mr. Chairman, I might mention a case of one of the better dealers. I live about 50 miles from Montreal. I know of a television set bought from one of the large departmental stores in Montreal and sold to some summer people.

They complained that the set was not working; and this large departmental store sent a serviceman from Montreal up to their place, to give service -- which indicates that the better houses do sell such items with the understanding that

part of the sale includes a certain package of service. That is a case where I know that they accepted that as part of the responsibility, when they made the sale.

On the other hand, I think the locality might have some governing effect on that, in that in a large center where some of these people always feel that there is another person coming along, when the fellow comes back they may say, "Well, we are sorry, but there is nothing we can do about it. You have bought it." If they are in a large enough area, through their advertising facilities there is still another sucker down the street. But, in the smaller centers, even if you sell on the definite understanding that you are not going to give service, just as soon as something goes wrong, that man will be back at your door; and if you do not give him service, then everybody in the town will know about it -- "Don't buy any of your appliances from Johnson;" "Don't buy any of your appliances from McOuat, because you will not get any service." But he does not tell them that. He does not tell the people that he bought it at a cheaper price with the distinct understanding that he was not going to get any service.

And, not only is it that particular appliance that he does not buy from you, but he is just sore at you because you have not given

the service. I think that particularly in the smaller areas, the suburban districts and in the country districts, that policy just cannot work -- although they can get away with it in the larger centers, where there is another fellow down the street.

MR. WICKWIRE: And I take it, Mr. McOuat that the person buying an article from one of these, shall we call them, cut-rate merchants, would not re-buy from them?

MR. McOUAT: Very true. And he is operating in an area where he has sufficient people to draw from. He is in a position to use such a type of advertising to draw that person in.

MR. WICKWIRE: So that in the long run, if there are too many dissatisfied people requiring service, the business will all come back to the retail hardware dealer, anyway?

MR. McOUAT: Well, perhaps so, if he has not gone out of business in the meantime -- if he has not been forced out of business in the meantime.

MR. WICKWIRE: The appliances business surely is not that serious, with the retail hardware merchant, is it?

MR. McOUAT: Yes, it is, both through appliances and the inference --

MR. WICKWIRE: But is he not maintaining a good proportion of his customers on the basis of

service, about which we have been talking?

MR. McOUAT: The hardware man is maintaining his service, but it costs money to give service. And there is an inference there that he has got a big markup on the other items that he is handling, too.

MR. WICKWIRE: Well, that is not so, is it?

MR. McOUAT: No, but the inference is there.

MR. WICKWIRE: But it is not so, in fact, is it?

MR. McOUAT: Do you say it is not, in fact?

MR. WICKWIRE: You say that the inference is there.

MR. McOUAT: Yes. I have had a customer say to me, "Well, how is it that you sell this television set at \$259 and I can buy it somewhere else for \$199?"

The next time he comes in to buy something from me he will tell me that -- "If you are getting too big a markup on that, all your articles are the same."

MR. WICKWIRE: Well, when you get a customer in that quizzical frame of mind, do you not tell him that you are selling service, and that you will look after the needs of that stuff, and that of course it costs you money to give that service, but that he is paying for it.

MR. McOUAT: You do say that, but --

MR. WICKWIRE: He buys somewhere else.

MR. McOUAT: Yes.

THE CHAIRMAN: I suppose he is told in the other place that they will give him service, too, is he? I suppose he is told that, until he finds out that he does not get it.

MR. McOUAT: That is true.

MR. JOHNSON: May I enlarge upon one question you asked Mr. Mcouat, when you made the remark that they may go out of business in the meantime. I am referring to my own experience, again. I did a fair electrical business until this last couple of years; and I have been carrying on, certainly not because I was making any money out of it. If I had to depend on what I made on the electrical end of the business in the last few years, I would fare very badly. But I more or less carried on, along with the regular hardware business, in order to stay in there, thinking that surely some day this situation would correct itself to a reasonable degree. And I can understand why a great many would fall by the wayside.

MR. WICKWIRE: There is a reference to that, Mr. Johnson, -- that particular subject -- in your brief, at page 5 where it says:

Through the loss of these sales, reduced income and net profit, and increasing threat

of business failure in our trade.

Now, I have before me the commercial statistics for the commercial failures in the hardware business under the provisions of the Bankruptcy and Winding-up Acts published by the Dominion Bureau of Statistics. In 1951 there were 23; in 1952 there were 17 and 1953 there were 20. It does not look as though your fears were actually being borne out by what has actually happened, does it?

MR. CAWKER: I do not believe that this practice has been in force long enough actually to have any failures, right up to the present time. But if it continues another year, then I think your figures will show a decided difference.

MR. GILMOUR: Speaking along the lines of failures, I have a D.B.S. bulletin for September 9, 1954 -- and that is the latest one. I do not pretend to say that this relates only to the hardware business, but it says that in the first six months of this year there were 1,210 businesses went bankrupt, a 65 per cent jump from the 753 commercial failures in the first half of 1953.

Now, as I say, I do not pretend to say that a large amount of this is hardware, but it would appear that we should be vitally concerned about it, the way the pattern tends at the present time.

THE CHAIRMAN: But there is nothing in that statement which indicates the reasons for the increase, you see. There has been a good deal said about the somewhat lower level of general business; and that, surely, would affect the number of business failures in that time. There is nothing in the statement to which you have referred that ties it to loss leadering in hardware, or in any other business?

MR. GILMOUR: Oh, definitely not; but I was simply referring to the fact of business failures.

MR. WICKWIRE: Well, that is the difficulty, that there is nothing in the statement which ties it to loss leadering. Then, will you refer back to your brief at page 4, and the column in which you show the percentage change in hardware retail trade. You read that in detail when you read your brief.

MR. GILMOUR: Yes, correct.

MR. WICKWIRE: May I point out that on the percentage changes in retail trade in some 21 types of trade, that 17 of the 21 show a decrease, and 4 of them show an increase. Is there any suggestion, by citing this column and these figures in your brief, that the decline in the hardware trade, the retail hardware trade, has been due to loss leadering; or might it be due to general conditions?

MR. GILMOUR: It could be due to general conditions, and it could be due to loss leadering.

I do not think I am prepared to answer that question directly. But, with loss leadering being evident, it is certainly contributing to our cause for concern. Because I do know -- and I am relating my own personal experience -- that three years ago in my store, going back to these kettles, these General Electric kettles -- and they seem to be the articles that are always being brought up.

MR. WICKWIRE: They seem to be the standard football.

MR. GILMOUR: Yes, they seem to be the standard football -- and, let us hope that Ottawa can kick it farther next weekend. But, with reference to these kettles in my store, let me say that I used to keep possibly a stock of 18 to 24 to service my trade. I can honestly say that in the last few years, the last few months, two would be all the stock I would dare to keep in the store. I could not make any profit on them -- and there is no point in stocking merchandise on which you cannot make a profit. And, by the same token, if I can buy a kettle that I can sell the public at \$5 and make \$1.95 on it, I certainly would not invest my money to have an item in my store that sells for \$13 and on which I make only 50 cents.

MR. WICKWIRE: But you still stock the G.E. kettle?

MR. GILMOUR: We keep a token stock, let us say.

THE CHAIRMAN: If you will be much longer, perhaps we should have a short break at this time.

--- Recess.

--- Upon resuming.

MR. WICKWIRE: Turning to page 7 of your brief you say:

To the manufacturer, therefore, we visualize that persistent loss leader selling will eventually reduce total sales, contributing to reduced employment, production, and labour income.

The statistics produced before this Commission, to date, would indicate that there has been no dropping off in sales, so far as the manufacturers are concerned. Even supposing that your fear as expressed in your brief at the top of page 7 did actually come about, what is happening to the consumer's income? Why is he not buying these or other articles?

MR. GILMOUR: Sir, I will answer that question. I think that if persistent loss leadering continues the Canadian manufacturer -- his merchandise-- will become less and less. That is, the public acceptance of it will become less and less, because of the fact that the number of dealers throughout Canada

will not be able to compete with these prices that they are being offered for.

MR. WICKWIRE: Will the consumer not buy that article, or an equivalent article, or will he just keep his money in his pocket, or in his bank account?

MR. CAWKER: May I interrupt, there? I think your meaning is this: Why are sales not increasing in that commodity?

MR. WICKWIRE: Yes.

MR. CAWKER: Could it be that there have been so many high pressure sales?

MR. WICKWIRE: That the market is glutted?

MR. CAWKER: Yes, that there is a saturation point reached, as in connection with any commodity. I, for one, think that that point has been reached in certain traffic appliances, or very nearly so.

MR. WICKWIRE: Perhaps in certain areas that is so.

MR. CAWKER: That is correct.

MR. WICKWIRE: Could there not be general improvements from year to year, and from time to time in these appliances, that would stimulate the market?

MR. CAWKER: That is the hope of the manufacturers. But there, again, that is contingent upon the wearability of the appliance, and how often it wears out. And with name brand merchandise

under a guarantee, these appliances last for a long time. I know they do in my home -- with reasonable care. They last indefinitely, if they are taken care of. The well known brands do not require very much by way of replacement.

MR. WICKWIRE: Then, on the same page, paragraph C, half way through the paragraph, you say in your brief:

Consequently, we will have no alternative but to meet loss leader competition by attempting to market poorer quality merchandise (much of it probably imported) with consequent loss to Canadian production and employment.

Now, will the consumer be deceived by such a practice as that?

MR. CAWKER: Well, could that not be taking place to a certain degree right now, with substitute lines being introduced through our stores? I know there are such lines in mine that we are selling at what we consider an ethical markup, in preference, and against --

MR. WICKWIRE: In competition?

MR. CAWKER: In competition with these name brands, yes. These are lines -- these name brand lines, that are so deep cut that the selling of them, so far as my firm is concerned, has no

advantage. In fact, it is a loss. It represents a net loss. "So, therefore, we are trying to sell substitute lines, profitable lines, comparative lines, as nearly as possible, but on which we can make a profit, and feel at the same time that we are selling a reasonably reliable piece of merchandise.

THE CHAIRMAN: That would not be quite the case referred to here. If you are selling quite reliable merchandise. But if the merchandise some dealers feel they are forced to introduce, are made by other manufacturers, not bearing recognized brand names -- if it is definitely inferior, in relation to the price that is charged, will not they have a good deal of difficulty in selling the substitute merchandise?

MR. CAWKER: I think you are quite right, and we regret that we have to take that step. In my own opinion, in connection with imported lines, no substitute line measures up to the quality and the design of the merchandise mentioned in this schedule. If we could maintain a reasonable profit on the advertised lines that are deep cut, we would definitely do so. They are far better for us, as merchants, to sell as merchandise in our stores than any substitute lines brought in from abroad or any American lines. We would far rather -- providing of course that we can make money on it -- we would far rather handle these other lines.

MR. WICKWIRE: Could you give us one or two examples of types of things you have been talking about?

MR. CAWKER: I could refer -- well, I have not been in my store very much for the last six months. But, in one particular case, there was pop-up toasters.

MR. WICKWIRE: Pop-up toasters.

MR. CAWKER: Yes, pop-up toasters. There is available to us in Toronto different lines of pop-up toasters that compare, I think, fairly favourably with General Electric or Westinghouse and that are at considerably less in price. We have been handling them, and quite successfully, too.

THE CHAIRMAN: If they compare favourably, why should you not handle them successfully.

MR. CAWKER: Yes. But, mind you, we do have more service on them. We do have more trouble than we do with the General Electric or the Westinghouse. But they are not bad.

MR. WICKWIRE: Are they imported?

MR. CAWKER: From the United States, yes.

MR. WICKWIRE: Any other articles you can tell us about? Or is the toaster the main one, so far as you are concerned.

MR. CAWKER: Of course, there are innumerable different lines of electric irons that we handle, some of which are Canadian and some are

American. And then we can go a little farther, and there are electric clocks.

MR. WICKWIRE: The jewellers would not like you selling electric clocks.

MR. CAWKER: Well, we sell them -- in fact we sell more than the jewellers do.

MR. WICKWIRE: And you say that, generally, these articles you have described are of inferior quality to the types you have been handling?

MR. CAWKER: I would say definitely that they do not measure up to the lines we have in Canada, definitely.

MR. WICKWIRE: Then, at the foot of page 7 you make reference to the McQuarrie Committee, and you say --

When sales of brand name products are concentrated in the hands of a relatively few large-scale dealers in each populated area --

That that is what the McQuarrie Committee had in mind in their report, and that that tended to indicate a monopolistic situation. Do I take that from the reference in your brief?

MR. CAWKER: I cannot answer that question.

MR. GILMOUR: I can be corrected too on this. But was that not more or less the fear, if that is the proper word -- was that not the concern in respect of the report?

MR. WICKWIRE: Using your word, supposing it is the fear, is there any evidence of it?

MR. GILMOUR: Of the concentration of this merchandise?

MR. WICKWIRE: Yes.

MR. GILMOUR: Well, I do not have any evidence of it, sir. But I would say that if an analysis or a survey were taken, that these outlets which we have shown in our brief are at the present time selling the greater majority of these items that are in question.

MR. WICKWIRE: In the city of Toronto.

MR. GILMOUR: Yes, in the city of Toronto. I do not know if I am correct in that amount; but from looking at the trade as an overall picture I would feel that that is what has happened.

If we had access to the purchases of this group of individuals here, in comparison with a comparable group of smaller retailers, I think you would find that these people are definitely selling many more of the items.

MR. WICKWIRE: You have indicated that, so far as your own business is concerned, that you still stock a few of the brand name appliances?

MR. GILMOUR: Yes.

MR. WICKWIRE: Does that apply pretty generally among the retail hardware trade do you know?

MR. GILMOUR: Well, I would imagine so, yes.

MR. WICKWIRE: But much less than you formerly did, is that correct?

MR. GILMOUR: Yes.

MR. JOHNSON: May I answer that in this way, that I believe the brief that was presented by British Columbia had accompanying copies of letters where a number of the dealers are completely out of the lines that they carry. In many cases the dealers are trying to keep a few, as a sort of a front.

In citing my own case, where I used to buy in quantities of 96, which was recognized at the purchase price of 100, from General Electric, I now buy in quantities of packages of 3 or 4 or whatever the case might be. And the purchases are just about the same as when I was buying 96. In other words, I probably buy 4 in the same period of time that I was at one time selling 96.

MR. WICKWIRE: And the four would cost you considerably more?

MR. JOHNSON: Yes, they cost more.

THE CHAIRMAN: You are only doing about 5 per cent as much business in those articles as you did before?

MR. JOHNSON: That is correct.

MR. WICKWIRE: Turning to page 8, item 3 of your brief, you state:

We doubt that the Canadian General Electric company would repeat its costly programme on its floor polisher under present marketing conditions.

Will you elucidate on the words "costly programme"?

MR. GILMOUR: Well, again, I could be corrected, but I understand that the General Electric Company did make a submission before this Commission.

MR. WICKWIRE: Yes.

MR. GILMOUR: And in their brief they explained the exact procedure as to how they consumer-tested their floor polisher before it was put on the market. I do not know where they state that in their brief, but in the brief I am told they did explain, step by step, as to how they did it. And I think we will have to admit that that is a costly procedure, to gain public acceptance to indicate to them whether or not to go ahead and carry that particular item.

Had they not spent that money to find out that information, to find out whether or not the merchandise would be consumer acceptable they would not have --

MR. WICKWIRE: But there is no doubt in your opinion, is there, that the floor polisher which we are now discussing was accepted by the public?

MR. GILMOUR: Definitely.

MR. WICKWIRE: It was a great success?

MR. GILMOUR: It was a tremendous success, I would say.

MR. WICKWIRE: And do you not think that the General Electric Company got back their cost of making the product enticing to the public?

MR. GILMOUR: I would say they have, yes.

MR. WICKWIRE: Why could they not continue to do that with other articles, in the future?

MR. GILMOUR: To answer that, sir, there is no doubt about it that the sale of polishers, looking at it in the over-all distribution across Canada, is dropping. And I do not see how they would repeat that process again to consumer-test an article which they were contemplating producing, if the article was going to be sold at these deep-cut prices.

MR. WICKWIRE: Perhaps everyone in Canada who needs one has one?

MR. GILMOUR: I know that we used to sell a lot of them, and this last year we have not sold any of them. And it is not because everybody in the district has one, either.

MR. WICKWIRE: Does your association give, or can you give a reason why a company like the Canadian General Electric Company could not, with a new product, create consumer acceptance

for it? I think the Commission would be interested to know if you can help us in that respect.

MR. GILMOUR: Do you mean how they create acceptance by the public?

MR. WICKWIRE: Well, you say in your brief,--

We doubt that the Canadian General Electric company would repeat its costly programme on its floor polisher under present marketing conditions.

Why would they not?

MR. CAWKER: I do not think we have any evidence or reason to say that they would not. We doubt it, but we have no evidence.

THE CHAIRMAN: On what is your doubt based?

MR. CAWKER: Perhaps on the saturation point. In the case of floor polishers there is possibly a semi-saturation point reached. And, with the evidence of deep-cut prices in certain channels, with your polisher, they could not obtain dealer representation throughout the country as a whole to justify a major expenditure to introduce a new product. Because you must admit that these ads are channelled in densely populated areas. But after all, that just constitutes a portion of the business of the General Electric company, or any other manufacturer.

I know that I, for one, if I were Mel

Johnson at Grimsby, and the General Electric traveller came along to me with a proposition on floor polishers to retail at a suggested resale price, I certainly would be most hesitant in taking them on, if I knew they were being sold in Toronto and Hamilton at deep-cut prices. So therefore, General Electric cannot get representation on that product in Grimsby -- and that can be continued on throughout the whole dominion.

It is a long-range proposition that these national manufacturers are interested in -- at least, I presume so. And your deep-cut prices, or your loss leader, does not permit a long-range program -- far from it.

MR. WICKWIRE: Some other method would have to be devised?

MR. CAWKER: They narrow the field of distribution.

MR. WICKWIRE: Some other method would have to be devised.

MR. CAWKER: Yes, in our opinion.

MR. WICKWIRE: Then, on page 8 you say:

The cut-rate dealer who has developed volume based on loss leaders will demand that the loss leader be turned into a profit maker. Otherwise, the dealer will threaten to discontinue handling the brand name product, and promote inferior competitive

merchandise. Thus we will have the anomalous situation where a few dealers will establish and maintain retail prices, subject only to the competitive influence of imported foreign goods.

On what consideration do you base that statement?

MR. CAWKER: I think perhaps the only observation I can make is that for quite a number of years -- and it does not pertain to electrical appliances, but it pertains to a well known line of paint -- it was very well represented in the city of Toronto. And they, in turn, opened their own retail outlets with the result that the dealers just did not carry their lines. There were several company-owned outfits left in the city of Toronto, and their representation dropped 90 per cent, just because that particular manufacturer did not play ball with the dealers. And that situation exists today in the city of Toronto in that particular line of paint.

MR. WICKWIRE: Well, that is a manufacturer-dealer problem. I suppose it does not affect the customer.

MR. CAWKER: No. But it does affect that company's distribution of its product. It has been very seriously curtailed.

MR. WICKWIRE: What is the situation today?

MR. CAWKER: Exactly the same.

MR. WICKWIRE: The manufacturers still maintain their own retail outlets.

MR. CAWKER: I do not know whether they have their own retail outlets or not, even; but it is a well known paint company.

MR. WICKWIRE: Then, at the top of page 9 you say:

We believe that many of the so-called cut-rate bargains, bought without assurance of service, proper installation, repairs, etc., are often phony bargains.

Surely that does not apply to products like Sunbeam or Westinghouse, General Electric, and all the well known small appliance manufacturers, does it?

MR. JOHNSON: Why not?

MR. WICKWIRE: Well, I think it was Mr. Cawker who, only a minute ago, said that he had some appliances in his house that he had had for a good many years. I know I have them, too.

MR. JOHNSON: He did not say that he had service on them.

MR. WICKWIRE: If I were able to buy one at a bargain price, it does not necessarily follow that it is a phony bargain, does it?

MR. JOHNSON: He did not say, of course, that he did not have service on it at any time. You might be the fortunate one who would not need to have service. But, on the other hand, if you were unfortunate and had to have service, then it would be a phony bargain so far as you are concerned.

MR. CAWKER: Perhaps I have one angle I might add to that. We have had cases that have been definitely investigated in the city of Toronto, say for instance Westinghouse irons have been advertised at "X" dollars, and displayed in dealers' stores. And yet you just go in there and try to buy one of those articles! It is nailed down. You could not buy it. It has a tag dropped down behind it, that says "Sold" on it.

THE CHAIRMAN: That is not the same situation, because this paragraph speaks about things that are bought.

MR. CAWKER: It is nailed down, phony and fraudulent advertising.

MR. WICKWIRE: Well, I do not read your brief in that manner, Mr. Cawker. I thought you were talking about articles that customers had bought, and because they bought them at less than the suggested list price you say that they were phony bargains.

MR. CAWKER: I would suggest that the word should be "fraudulent instead of "phony".

MR. WICKWIRE: They would be fraudulent so far as the Retail Hardware Association is concerned, but they would not be fraudulent so far as the customer is concerned, is that not so?

MR. CAWKER: They would be fraudulent so far as the customer is concerned, because he cannot buy that article.

MR. WICKWIRE: Oh you are talking now about the article that is nailed down?

MR. CAWKER: Yes.

MR. WICKWIRE: I am talking about the article I actually buy.

MR. CAWKER: No; I think the customer is quite justified in buying at whatever price he can get it at.

MR. JOHNSON: I think the answer is actually that when you require service -- and I have given instances, and I have one or two more instances in connection with television that I could give.

MR. WICKWIRE: We come now to your suggested recommendations. I find your first alternative suggestion to be a very interesting one. Would this suggestion of referring the matter or dispute to the Minister or a board be effective to cure the ill alleged? Perhaps I can put my question this way; may not the damage have been done before it ever gets to the Minister or to the Board?

MR. GILMOUR: I do not know that it would

entirely correct the situation. But I feel that at least it would stabilize merchandising trends. Because, if a merchandiser or a store, regardless of size, knew that if he footballed a piece of merchandise around, that there was a possibility that he might not have that particular merchandise which he would want to have in his store, and which has good public acceptance, -- if he knew that there was a possibility that that might be withdrawn from him, I think he would be very careful in his merchandising policy on it. I do not say that it would correct it completely, sir, but I think it would help to straighten out the merchandising of this particular merchandise.

MR. WICKWIRE: There have been, I think, some suggestions made to the Commission by people who have submitted briefs that they did not wish to have any ministerial or board interference whatever. What do you say about that view. They say that they want business men to run their own business.

MR. CAWKER: I think that is quite right. We would like business men to run their own business. But we have legislation now from the government; we have governing legislation now, to say that the business man cannot end-price, for instance.

THE CHAIRMAN: Your first proposal is to repeal Section 34, so that the business man would run his own business. But if that cannot be done --

MR. GILMOUR: Then this alternative would be used.

MR. CAWKER: It would act as a **deterrent** to the situation we have now. I would not say that it would be an absolute cure, but I think it would act as a deterrent.

MR. WICKWIRE: In the opinion of your body, It would be an aim in the right direction?

MR. CAWKER: Yes.

THE CHAIRMAN: Has your organization obtained legal advice as to the constitutionality of this alternative proposal?

MR. GILMOUR: No, I do not think so. As we say, we believe that much study would have to be given to it. And I think we are offering this as a suggestion, an alternative suggestion only. It is not legal phraseology.

THE CHAIRMAN: It might run into the same sort of situation as arose in what is known as the Board of Commerce Case some years ago, wherein the statement was made that the jurisdiction of the federal parliament in these matters has been handled solely through its jurisdiction over criminal law, whereas the proposal you make might be held to be more closely related to property and civil rights than it is to criminal law. And if it was held to be essentially a civil right, there is a possibility that the courts might say that the

federal parliament had no authority to act.

MR. WICKWIRE: Or Trade and Commerce.

THE CHAIRMAN: Well, that was the Board of Commerce case.

MR. GILMOUR: This is only a suggestion -- whether it can be expanded upon and brought into being, we do not know. But we believe it is a suggestion that might help.

THE CHAIRMAN: I was just wondering whether you had considered that aspect of the matter.

MR. WICKWIRE: I have no more questions.

MR. JOHNSON: May I refer to some of the earlier discussion?

THE CHAIRMAN: Surely.

MR. JOHNSON: It is in reference to whether some of these firms that are selling at our cost, and less, purchased at better prices than we do. We were not able to answer the question at that time.

However, in the meantime, in referring to the brief presented by the Canadian General Electric company, at page 4, if I may read, it says:

On Thursday, April 8, Danforth Radio Company Limited who operates five retail stores in Toronto selling electrical appliances and TV featured our floor polisher in an ad --

and they show the ad along side of it --

-- in the Toronto Telegram at \$33.85. This ad was repeated on Friday, April 9 in the Toronto Star. Danforth Radio continued to sell polishers at \$33.85 until Monday, April 12 when they increased the price to \$38.95.

Between April 8 and April 12 inclusive Danforth Radio bought 833 polishers from Ellis and Howard, Limited, Toronto, Electro-phonics Supply Company Limited, Toronto and the wholesale division of the Canadian General Electric. They had purchased from other distributors as well. In chronological order, their purchases from these three distributors were as follows --

and then they go on to say that on April 8 from the Canadian General Electric Company, and on April 8 from Ellis and Howard, and on April 9 from Canadian General Electric company again, and on April 9 from Electro-phonics Supply, and on the 9th again from Canadian General Electric, and from Ellis and Howard, and on the 10th Canadian General Electric, and on the 12th Canadian General Electric. And then they say:

From the manner in which the polishers were bought and from shopping in Danforth Radio Stores several times during the sale and finding them out of stock, it appears

reasonable to conclude that all or almost all of the 833 polishers purchased by Danforth Radio during this period were sold by them during the three-day sale. This is more G.E. polishers than all the retailers in the metropolitan area of Toronto would normally sell in a month. It is almost as many polishers as the largest retailer in Toronto sold during a full year prior to the announcement of Section 34 of the Combines Investigation Act.

Tom Gibson, sales manager of Danforth Radio Company, stated to us on April 13 that while he did not know exactly how many G.E. polishers they had been selling before the sale, he estimated that they had been averaging about one per day. 629 of the 833 polishers bought during the four-day period and advertised at \$33.85 were purchased from the wholesale division of the Canadian General Electric at \$35.43 each. In view of the large quantity purchased from C.G.E. at this price it is fair and reasonable to conclude that the polishers purchased from the two other distributors were all at the same price.

We believe every one will agree that this is a clear-cut case of using a well

known product as a loss leader.

And what happened to them no doubt happened to all the others we have listed.

MR. CAWKER: Again speaking personally, I know the Danforth Radio and Appliances company well. I know the personnel, and it is just recently that they have gone into this deep-cut pricing, along with Eddie Black.

Prior to that time they had done a most ethical business, in our opinion. They had been ethical in their dealings and in their advertising and in their service. They are an excellent firm.

MR. WICKWIRE: Are they not still?

MR. CAWKER: They are even yet an excellent firm, yes.

MR. WHITELEY: Mr. Gilmour, from some items I have seen in trade journals, I have gathered the impression that in the retail hardware field there is a movement toward a sort of cash-and-carry and self-service system. Is that a correct impression?

MR. GILMOUR: Well, I would not say there is any movement toward that, sir. We do not, as an association, issue our own official trade magazine. Any comments you might read in a trade magazine could be the editor's view. It would be wonderful, I grant you if we could operate on a cash-and-carry basis. And there is no doubt that some of the comments that have been made in the

magazines are along that line -- to try to see if it can be done -- just the same as the check-out. That is another item. It is all a matter of discussion. I would not say that the movement is toward that, by any means.

MR. WHITELEY: Well, I have seen illustrations of new stores which appeared to be in that direction.

MR. GILMOUR: Experimental.

MR. CAWKER: I think you are quite right, sir, that there is a definite move in that direction, in the larger populated areas, the more densely populated areas. In those areas we are endeavouring to streamline our operations so as to display better our goods, and reduce selling costs, and make our stores more attractive to the consuming public.

In doing that we are unconsciously patterning our operations after the self-service idea. That is a natural process of evolution, as it is in the hardware trade in the larger centers.

MR. WHITELEY: I was wondering whether that was not an effort on the part of hardware merchants in making a shift in the direction of reducing service to the public.

MR. CAWKER: I maintain that the hardware merchant will have to do one of two things: If he is going to carry on and give the efficient service that he has been giving down through the years in

supplying service and service items, that these stream-lined stores or outlets do not provide, then we will have to charge considerably more for those services and those service items. It is either that, or go completely out of them, and take the volume of merchandise, the merchandise which can be handled in a supermarket operation. Then our costs would be reduced, and our profit margin should be mainted -- because our costs would be lower.

But, while we are doing that, we are not providing efficient service to the people in our community.

MR. WHITELEY: Well, a movement in that direction would give the public the alternative. You could go into a hardware that has self service and take something off the rack, and go to the check-out counter and complete the transaction.

MR. JOHNSON: Mr. Gilmour -- just returned a short time ago from a conference of the secretaries of the different states in the United States. There were 37, in all. We were invited there to sit in and to observe -- which we did. And there is a trend in the United States towards that sort of thing. There are a few stores on which, shall we say, almost as an experiment, they are keeping a close eye. They are not yet really prepared to state whether they are entirely successful or satisfactory. But there is that trend.

MR. FAVREAU: In the case of services, I presume that, with respect to at least some of the items, such as floor polishers, there must still be room to reduce prices slightly from the list prices or the suggested prices, even in the case of those who do perform service?

MR. CAWKER: I think in my interpretation and the average hardware dealer's interpretation of service, it is not confined to the articles in question. It is a general service that the hardware dealers give to you when you, the neighbour around the corner, have a leaky pipe or a broken glass or your furnace pipe has fallen down, or your wife comes along with a squeaky baby carriage, and we oil the wheels for her.

That type of service is what we have always given in our respective communities. And unless we charge more for that service, we will have to discontinue it -- that is, if we have those deep-cut prices on merchandise which would help us to maintain those services.

MR. FAVREAU: Would not a better policing of the outlets for dealers on the part of the manufacturers, seeing to it that they do not deceive the public and that they should not be allowed to let the public believe that service will be given when, in fact, they do not intend to give it -- would not such policing, resulting in the curtailment

of a dealer who would so deceive the public, in part at least solve your problem?

MR. CAWKER: If it could be policing, that would be wonderful. But then, are you not getting right back more or less to the problem of end-pricing? I think you are.

MR. FAVREAU: If the manufacturer would leave it to the dealer to sell at whatever price he felt he could sell at, efficiently, but he would still force him to maintain service -- I do not believe there would be any difficulty in that way.

MR. CAWKER: The manufacturer cannot force the dealer to do anything. The only thing you can do is try to stop his source of supply of his particular product. But when the manufacturer comes into my store and tells me what to do with my merchandise, I just do not take that sort of thing.

MR. FAVREAU: Why could he tell you to maintain such a price, then?

MR. CAWKER: Because it is to our advantage to do so.

THE CHAIRMAN: But if it was to your advantage to do so, you would not need to be told.

MR. CAWKER: That is right, we would not need to be told -- although some of them are.

MR. FAVREAU: So there are no manufacturers who do, as a condition to maintaining a dealership, exact that their dealers shall perform servicing?

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MR. CAWKER: I think Mr. Johnson is under that kind of contract.

MR. FAVREAU: Not in the big cities, eh?

MR. JOHNSON: Yes, I am expected to give that service. But if I did not give it, I do not know what they could do about it. But I do, because I am interested in my customers.

THE CHAIRMAN: They may take away your franchise.

MR. FAVREAU: As a last question, are there some items or some appliances where the dealer is not expected, in large centers such as Montreal, Winnipeg and Toronto to perform service, but service is included in the sale of the appliance to the dealer by the manufacturer. We were told that in the case of ranges servicing was performed by the manufacturer.

MR. CAWKER: Of course the purchaser, if he is denied service where he purchases his article, has his recourse to appeal to the manufacturer. And that has been done, I believe, in a good many cases in connection with the cases we have been illustrating-- people' who have been cut-pricing, or loss leadering, as we term it. They have had recourse to the manufacturer, in order to get satisfaction.

MR. JOHNSON: I submit that in some cases it would not do the customer any good to appeal to the manufacturer. I had an instance just a while

back. For a short time I handled Westinghouse electric, along with my present line. And in taking that on, they had not been in operation in my town for a while. There were some troubles. As soon as I announced that I was handling Westinghouse, I received quite a number of, shall we say, back calls.

In talking to these people I found out that they had appealed to Westinghouse, and that Westinghouse would not send anyone to service them. They just absolutely ignored service. They said that that was up to the dealer they purchased it from. I appealed to them and I said, "Where do I stand in this? Do I have to turn around and give these people free service for something I never sold to them?" They said, "Well, if you want to keep goodwill in your town with respect to Westinghouse articles, that is what you have to do." I don't handle Westinghouse today.

MR. WHITELEY: We had a Westinghouse sales manager as a witness, and he said that he, himself, was going out to demonstrate and show customers how to operate machines, because the dealers had not done so.

THE CHAIRMAN: He did it just the day before he came before us, I think he said. Well, gentlemen, I believe we have nothing further to ask you. If you have nothing more to add, we will now adjourn until this afternoon.

--- Luncheon adjournment.

REPRESENTATIONS:

The Cooperative Union of Canada
Represented by:
Ralph H. Staples, President
Rev. Antoni Toupin, O.M.I.,
Secretary, Le Conseil Ontarien D'Orientation
Populaire.

THE CHAIRMAN: I believe the first brief to be presented this afternoon is to be presented by and on behalf of the Cooperative Union of Canada. Are the representatives of the Union here?

MR. STAPLES: Yes.

THE CHAIRMAN: Would you just let us have your names, please.

MR. STAPLES: Mr. Chairman and gentlemen of the Commission, I am Ralph Staples, president of the Cooperative Union of Canada; and I have with me on this occasion the Reverend Antoni Toupin. Father Toupin is secretary of Le Conseil Ontarien D'Orientation Populaire, which is the Ontario section, if I may use that expression, of Le Conseil Canadien de la Cooperation, which is the national organization.

THE CHAIRMAN: I might point out to you, Mr. Staples, that you are free either to read the brief and discuss it afterwards, or to discuss portions of it as you go along.

MR. STAPLES: Thank you, Mr. Chairman.
It is as follows:

On behalf of the co-operative movement in Canada we are pleased to have this opportunity of presenting to the Restrictive Trade Practices Commission our views in connection with the enquiry into loss-leader selling.

The Co-operative Union of Canada and Le Conseil Canadien de la Cooperation together represent the vast majority of Canada's co-operatives.

These two organizations work closely together on points of common interest, such as the matter before us today. The brief continues:

In effect these two national organizations are federations of provincial associations of co-operatives. These provincial associations include in their membership co-operatives engaged in a very wide range of activity.

The extent of the co-operative movement in Canada can best be comprehended through a review of the booklet "Co-operation in Canada," which is published annually by the Canada Department of Agriculture. The latest of these reports refers to the year 1952, and we will not include details in this brief. Suffice it to say that almost $1\frac{1}{2}$ million

people are found in the membership of co-operatives in Canada. Co-operatives have assets totalling more than 500 million dollars and in 1952 their business volume reached about $1\frac{1}{2}$ billion dollars.

In its hearings through the spring and summer the Commission has received many briefs from retailers, manufacturers and their associations. Time and again it was suggested by witnesses before the Commission that the public interest requires conditions which will permit manufacturers and retailers to operate at a satisfactory profit. It was frequently stated that the manufacturer must have a satisfactory margin in order to permit volume production and to encourage the development of new products, while the retailer must have a satisfactory margin in order to do what was termed an effective and creative job of selling. We take no exception to these expressions of opinion, but we would point out that co-operatives are organized for a purpose which is not that of profit-making.

Perhaps we should deal briefly with the structure and purposes of co-operative organizations, for this will have a bearing on the points of view we wish to express. The

The typical co-operative is established and maintained by a group of people who are its member-customers, in order to provide themselves on a democratic basis with a needed service at the proper cost of that service. The members of the co-operative provide both the capital and the patronage to operate the necessary business enterprise. The services with which the members provide themselves may involve many of the usual functions such as manufacturing, processing, storing, merchandising, advertising, financing, transporting. Even though some of these functions are quite complicated, and must be carried on on a wide scale, in the long run the member of the co-operative will receive the service provided at the cost of the service. Though co-operatives are engaged in many lines of business, in this brief we are concerned mainly with those organized for purposes of procurement.

The operation of a modern complex business at cost presents certain difficulties. If the exact cost of operation could be foreseen the price at which the co-operative sells to its member could reflect exactly the cost of goods purchased by the co-operative and the expense of operating the business. But the

cost of operating a business cannot be foreseen and for this reason cooperatives usually sell their goods at competitive prices, at the "going" price.

In order to permit this principle of operation at cost to operate in a practical way, a device has been developed known as the patronage dividend. Its introduction is often credited to a group of weavers who organized a co-operative in Rochdale, England, in 1844. If operations for the year result in a surplus -- that is if the members have paid to the co-operative more than necessary to cover the cost of goods and operating expenses, the resulting surplus will be refunded to the members in proportion to their purchases, not on the basis of their capital investment as is the case with profit business.

This point deserves further comment because it is often misunderstood. The benefits of co-operative activity are many, among them are the tendency toward better quality merchandise for obviously the members have nothing to gain by selling themselves goods of doubtful value, the opportunity to participate in developing their own sources of supply and the social advantages found in an economic system operated on a democratic basis. It is necessary

therefore to keep the patronage dividend in proper perspective. It is not a profit in any usual sense of that term, but merely the final adjustment reflecting such factors as volume of business, cost of merchandise and expense of operation.

Our main concern is that no restriction will be introduced, either by government or by the suppliers of goods, which will interfere with the operation of co-operatives. This is one reason why the co-operative movement in Canada supported the abolition of resale price maintenance in a brief which was presented to the Parliamentary Committee on Resale Price Maintenance in December, 1951. We are fearful lest, if manufacturers are given the legal right to maintain resale prices, the use of the patronage dividend method may be interpreted by them as a price cut. Co-operators suspect that the application of their operation-at-cost principle has been one of the main reasons why they have at times found it difficult to purchase certain merchandise. In a recent survey concerning resale price maintenance the International Co-operative Alliance with headquarters in London, England, representing co-operatives in thirty countries, including

Canada made this statement: "the dividend paid by co-operative societies and other traders is often regarded as 'price-cutting.'" We are making this point because a member of the briefs presented to the Commission although ostensibly concerned with loss-leader selling have actually as far as we can see been more directly concerned with the desirability of resale price maintenance.

Notwithstanding the fact that the actual retail price of a particular piece of merchandise is not necessarily the final cost to the member who purchases through this co-operative, the co-operative movement has a great interest in retail price levels. This interest in price arises from the simple fact that unless the retail price level is high enough to cover the cost of the merchandise to the co-operative plus the expense of operation, the co-operative will be operated at a loss and even though co-operatives do not exist to make profits losses can only lead to bankruptcy. Any unfair and discriminatory trading practices can bear as heavily on a co-operative as on any other type of business, because the members of the co-operative are subject to exactly the same influence as the customers of a profit business.

One who reads the evidence which has been presented to the Commission must be shocked to learn that responsible representatives of manufacturers and distributors believe many unethical and deceptive practices are widespread -- advertising articles not really available for sale, advertising previous prices which are fictitious in order to show a large decrease, advertising not in accordance with the facts, making untrue statements about competitors and their products, hiding the real meaning of "no cash down" and the making of exorbitant carrying charges, reducing quality and service below expected levels.

To the extent that loss-leader selling is deceptive it is deplorable, but it is only one such practice. We feel that such questionable practices cannot be eliminated through direct legislation because to a degree at least they are inherent in a profit system.

I should like to depart from the text for just a moment, because this is a serious problem and a very fundamental one. The discussions before the committee on trading practices seemed to fall into two categories, predatory practices and practices

and practices which sometimes were described as properly competitive. To us cooperators this is a distinction without much of a difference.

Cooperators accept the fact of competition, of course, and we realize that our organizations must live in the economic world as it exists. But we would like to see more of an intelligent approach to the task of meeting human needs than the one that is based upon strife and selfishness, essentially.

One witness before the Commission, that I noticed, went a long way in saying substantially this, "We are determined that we will protect our investment and enter into any type of merchandising program, regardless of whom it adversely affects."

Another said, "I do not think anybody in business is going for just a small profit. They go for a big profit, if they can get it" -- and a number of others seemed to be of the same opinion. Then, the brief continues:

We feel that the best solution to this problem is to widen as rapidly as possible those segments of our economic system which are based on a different set of principles, on principles of self-help, of mutual aid, of service at cost, in short the co-operative way.

This co-operative method of doing business is developing slowly by a process of evolution.

It cannot be introduced rapidly from the top. It is brotherhood in business. It must be soundly based on the inborn but inhibited desire of everyone for freedom and opportunity. It can only be developed as people become ready to accept this different approach and the responsibilities that go along with co-operative operation. In the meantime some further protection against unusually harmful practices does seem necessary in the public interest.

We would suggest that the Commission consider recommending the organization through federal legislation of a board (or commission or committee) which would be available to hear complaints brought before it by any business enterprise feeling itself to be the victim of trade practices injurious to the public interest. The Board would have authority to require the production of information and the appearance of witnesses but would not be clothed with any great measure of regulatory power. Hearings would be held in public and evidence presented would be made available to all interested. Such a hearing with its attendant publicity or even the possibility of such a hearing would have quite a salutary effect upon any

of those who are tempted to go beyond the confines of reasonably competitive trade practices.

We believe that this suggestion has real merit and we would like to see it tried. If too many of the offenders persisted in their misguided ways it might be necessary to give the board added authority, but we would like to see this step postponed as long as possible. Public opinion is a potent force, and we have a good deal of faith in the voluntary methods of discussion, negotiation and compromise.

THE CHAIRMAN: Do you wish to add anything further at this time, Mr. Staples?

MR. STAPLES: I think not, right now. If there are any questions, perhaps one would want to add a little later on.

THE CHAIRMAN: I think perhaps there will be some questions. Possibly Father Toupin would like to say something.

FATHER TOUPIN: No, I think not.

THE CHAIRMAN: Then, Mr. Gerin-Lajoie, have you some questions?

MR. GERIN-LAJOIE: Mr. Staples, would you care to tell the Commission if, to your knowledge and in your view there is any extent of loss leading practices being carried on in Canada at the present time?

MR. STAPLES: Well, perhaps Mr. Gerin-Lajoie we should ask the perennial question as to what is a loss leading practice.

MR. GERIN-LAJOIE: Possibly I have in mind that you might tell us that, yourself -- what you would call a loss leading practice, or practices.

MR. STAPLES: Well, we would be on very safe ground if we said that a loss leader practice is a practice of selling goods below the cost of acquisition -- whatever that is, one might add, in brackets. But, so far as our observation goes -- and I cannot claim to speak on a question like that for the whole cooperative movement, because we are pretty widespread and farflung, but, so far as our observation goes, it is pretty difficult to see that the present levels of loss leading are very injurious.

THE CHAIRMAN: I was wondering, Mr. Staples, if you would include in your definition some requirement as to the purpose or the intent with which the practice is carried on, or would you assume that that might be taken for granted?

MR. STAPLES: Well, I think it is pretty difficult to deal with it in that way, Mr. Chairman. There are a great many reasons why a firm sells goods at a very low price.

THE CHAIRMAN: Yes, but I am thinking if they sell at a loss. That may be one thing. But

with loss loading -- the term "loading" would seem to indicate some purpose?

MR. STAPLES: Yes, I see your point, from the standpoint of definition.

THE CHAIRMAN: Yes.

MR. STAPLES: Well, generally speaking a loader is an offer, I suppose, in the hope of attracting customers to a store. Whether it is a loss leader or just a loader, that would be the purpose behind it.

THE CHAIRMAN: The purpose of attracting customers to the store?

MR. STAPLES: Yes.

THE CHAIRMAN: You would not take a definition somewhat similar to this, which has been given to us -- "For the purpose of injuring competition or competitors?"

MR. STAPLES: Well, we come back to the distinction which we say is not very much of a distinction, because competition is competition. No matter what your purpose is, if you are successful in attracting more business it cannot help but have an adverse effect upon your competitors to a greater or lesser extent.

So that when you try to define the purpose of it, it seems to me that you always come back to that level, to that common denominator. The purpose of it is to get more business. The result of it, if it is successful, is less business for the stores

around you. It cannot be otherwise.

MR. GERIN-LAJOIE: Now, Mr. Staples, you have considered loss loading from one aspect, that of selling under acquisition cost. But have you considered it from another aspect, that is for instance, that of selling under the accumulated cost of acquisition and cost of doing business, or whatever it may be in each individual case? Do you think that there is any extent of that practice? Does that practice exist to any great extent in Canada at the present time?

MR. STAPLES: You mean selling below the acquisition cost, plus a reasonable markup?

MR. GERIN-LAJOIE: A markup to cover overhead expenses.

THE CHAIRMAN: That includes profit as well, in the mind of the ordinary merchant.

MR. STAPLES: Yes. Well, again I am not in a good position to answer that question in any specific terms. Within the cooperative movement or organization I try to represent, I have not heard any very outspoken complaints. Or, perhaps, to be more accurate, I should say that I have heard very few complaints of practices of that nature.

MR. GERIN-LAJOIE: From your cooperatives.

MR. STAPLES: Yes.

MR. GERIN-LAJOIE: Across the country.

MR. STAPLES: Now, such complaints would

not necessarily come to me, because our organization is in the educational, promotional and protective field, rather than in the commercial field. Complaints I can recall, however, have concerned advertising practices, perhaps, mainly. What some of our cooperatives have objected to is the practice of -- well, they do not seem to object to selling at low prices, if they just would not advertise those low prices.

MR. GERIN-LAJOIE: I would like you, Mr. Staples, to give me some clarification, if possible, of what you have in mind in your proposals at the end of your brief. You mention, in the last full paragraph on page 4 unusual and harmful practices. And then, in the last line of the page, you refer to trade practices injurious to the public interest. Would you explain a bit more what you have in mind by such expressions?

MR. STAPLES: Perhaps I can do that best by using a couple of examples, if I may. These are what I claim them to be -- only examples of the kind of thing we might have in mind, and the kind of situation that we suggest the full light of publicity might help to correct.

To go back to some of the earlier evidence before the Commission, for instance. In several places, if I recall correctly, one example was used of loss loading, and it was used also as an example

of a bad advertising practice, and that was the practice of a vacuum cleaner company, I think it was, who advertise widely a rebuilt machine with attachments at what was suggested as a ridiculously low price. And then, when somebody came in to buy that machine, it was almost never sold. In fact, I think it was suggested at one point of the evidence that the agents had some sort of fund among themselves to which they were expected to contribute, if any agent should be sufficiently weak as to permit someone to buy that machine from him.

Well, I suppose our suggestion is that such practices are really nothing short of ridiculous, and that if such a company could be brought before the bar of public opinion, so that that practice and that all that is involved in it could be thoroughly aired, it would have a pretty good effect, a pretty healthy effect, we think.

How they avoid making such sales would be very enlightening to a lot of people who go out to buy vacuum cleaners, so that they might expect what would happen if they went into that particular store. I imagine a lot of them would go in there to watch the process go to work, if they were warned ahead of time. As a matter of fact, I tried it myself, once.

The other example -- and we might also go through the evidence for this one, although we would

not need to, because it is not new. However, I think it was found in the evidence of Professor Mundt, when he was saying, as a particular instance, that a large and widely spread creamery in Minnesota had been making a practice of trying to put the co-operatives out of business by raising the price of butterfat in certain areas where the cooperatives would be operating. The cooperatives would be operating in a relatively small area. The large organizations could afford to bid the price up to an unreasonably high limit in that area, because it would be only a small fraction of their total operations.

We suggest, that here again, the full light of publicity on that problem would be of tremendous help. And it is not an unheard of thing in Canada

We suspect sometimes that the practice is going on, even though it is difficult to prove it.

Well, if some company were buying goods in which cooperatives are interested, and producer organizations, at unusually high prices; or conversely, if they were selling goods that cooperatives were selling, at unusually low prices, in a certain area, it would be possible to find that out, and to compare their price levels in the different areas, and all that is involved in that very interesting aspect of their organization.

The other branches of their company,

their other outlets, probably would not know what is going on. If they did know it was going on, they would be asking questions as to why they could not get it at this lower price, too. I think that publicity could help to solve some of those problems. That is the kind of thing we had in mind.

MR. GERIN-LAJOLIE: Would you envisage that the Commission you propose in your brief would draft a code or some regulation to determine what those injurious practices or those harmful practices are, in order that people would know ahead of time what they are permitted to do and what they are not permitted to do?

MR. STAPLES: Well, I think probably such a commission would have to do something like that for its own guidance. Perhaps we have not thought this through completely, as to exactly how it would operate. But it is the effect of the practices that we would be interested in, rather than the practices, themselves. And I say again that that kind of thing is very difficult to define.

We were not suggesting that the Board or the Commission would have authority to attempt to correct these practices. And so, in our view, leaving that to public opinion and the buyers, themselves. Until, perhaps, it is not so necessary to try to set out exactly what their practices are. If some firm or some individual or some cooperative

feels that it is being abused because of unethical practices, if that is a good word, then I propose it would come to the Commission and it would say, "We want to bring so and so here to find out what really is going on, if we can, and why." The Commission, as you suggest, would have to satisfy itself that there was the possibility at least of some abuse, or the Commission would be in a rather ridiculous position. But if they ascertained that, then it seems to me that is as far as they need to go beforehand.

MR. GERIN-LAJOLIE: Now, thinking over the exact role of this Commission, do you consider it possible that some complaints might be brought before the Commission, complaints which would be entirely unfounded, and that such a situation might do harm to some people who would be -- well, let us say, accused -- in that matter?

MR. STAPLES: Well, the facts should stand on their own feet, we think. Cooperatives, traditionally, live in glass houses, and we cannot see any great reason why our competition should not do the same thing.

MR. GERIN-LAJOLIE: Have you any knowledge of the workings of the Federal Trade Commission in the United States, in the field comparable to the one you suggest?

MR. STAPLES: No, I have not.

MR. GERIN-LAJOIE: That is all I have to ask, Mr. Chairman.

THE CHAIRMAN: I think Mr. Favreau has one further question.

MR. FAVREAU: In the exercise of these additional or new powers by the Commission, what would be the issue of this public hearing of grievances? Would the Commission be expected to make a report?

MR. STAPLES: Oh, I think the Commission should make some sort of report. But perhaps the evidence presented would be the main part of that report. We are not suggesting that the Commission would be required to, shall we say, express an opinion as to what should be done about a situation. It is not a trial, in any sense of the term.

MR. GERIN-LAJOIE: Perhaps I might put another question to the witness in this connection. Would it be your view, or is it what you have in mind, that the Commission might make some recommendation to the parties before it on such occasion, whereby after hearing a group against which some grievances have been set out, the Commission would prepare a report setting out the facts, and then would recommend that the party should not continue or repeat such practices; or is it something else you have in mind?

MR. STAPLES: I think actually that would be quite a help. It would lend a good deal of

weight. It would be a focal point for public opinion. "Here are these experienced men on the Commission who have heard this evidence, and this is stated as their opinion." I think that might be quite a help, yes.

THE CHAIRMAN: Thank you, Mr. Staples. Unless you or Father Toupin wish to add something further, there will be nothing further in your presentation.

MR. STAPLES: I have nothing further to say, and I believe Father Toupin has nothing to add.

THE CHAIRMAN: In that case, then that completes the hearing of your presentation. Thank you for your attendance, gentlemen.

REPRESENTATIONS:

Jack M. Sider and Company,
Represented by:
Jack M. Sider.

THE CHAIRMAN: I believe the next brief to be presented this afternoon is by Jack M. Sider and Company. Will the representative of that company come forward, please. Perhaps for the purposes of the record it would be a good thing to have two or three questions so that we may have Mr. Sider's background. I understand that he is appearing personally.

MR. WICKWIRE: Mr. Sider, I understand you are Jack M. Sider, of Jack M. Sider and Company.

MR. SIDER: Yes.

MR. WICKWIRE: And what is your profession or business?

MR. SIDER: Well, I am business management consultant. I have spent seven years in Canada, and I am primarily engaged by large retail and chain stores and manufacturers, to deal with operations.

MR. WICKWIRE: In Canada?

MR. SIDER: Yes.

MR. WICKWIRE: And your office is in Montreal?

MR. SIDER: Yes.

THE CHAIRMAN: Would you mind speaking up a little, I cannot hear what you are saying.

You said that you are engaged by chain stores?

MR. SIDER: Manufacturing companies and chain stores and department stores.

THE CHAIRMAN: To advise them on what?

MR. SIDER: Merchandising, manufacturing, overhead -- well,,the mechanics of big business.

MR. WICKWIRE: What training have you had in that regard?

MR. SIDER: Well, I spent 14 years in England and got my economics degree and my law degree and I was a research student at the London School of Economics in business administration.

MR. WICKWIRE: And you have a legal degree, as well as a degree in economics?

MR. SIDER: Yes.

MR. WICKWIRE: And you have been acting as business consultant for seven years, did you say, in Canada?

MR. SIDER: Yes.

MR. WICKWIRE: And would you care to give to the Commission the type of firms, or the names of the firms who have employed you?

MR. SIDER: Yes. They were Bond Clothing, Zellers Limited; United stores, five cents to a dollar; Scott Clothing and Manufacturing company; and I was also in Chicago with Marshall-Fields; and I also had previous experience in England with Alexander Sloan, and the Houndsditch Warehouse

Company, the biggest wholesale house in England, and I was also with the Great Universal stores, and several others.

MR. WICKWIRE: Thank you. Would you care to present your brief now.

MR. SIDER: Do you wish me to read this?

THE CHAIRMAN: You may read as much as you think desirable. However, we have read it. But if you prefer you might simply comment on some points in it. That would be satisfactory to us -- whichever way you wish to proceed. But I would say we have read it, you understand.

MR. SIDER: Well, it is entirely for your decision.

THE CHAIRMAN: Whichever way you wish to proceed will be satisfactory to us.

MR. SIDER: It is a rather long report, and if you wish me to read it I will do so.

THE CHAIRMAN: Well, I do not. I think perhaps it might not be necessary, but I do not wish to prejudice the presentation of your argument in any way you wish to make it. We have read it, and perhaps it would be unnecessary to repeat it all now. However, I leave that in your hands. You may proceed in any way you wish. Perhaps you would prefer to give us a brief resume of the points you wish to emphasize, and to discuss those at as much length as you like.

MR. SIDER: Well, I will read a section of it, if it is all right with you.

THE CHAIRMAN: Just as you prefer. Read whatever you wish, whatever you think is desirable, and make whatever comments you wish to make upon it.

MR. SIDER: All right. May I proceed?

THE CHAIRMAN: Yes, surely; proceed.

MR. SIDER: It is as follows:

CANADIAN INDUSTRY TODAY IS AT THE CROSS-ROADS; manufacturers, wholesalers, retailers face a most serious challenge; supply is steadily outgrowing demand, competition among allied trades is unavoidable, the ingenuity of the small trader challenging the great business houses whenever and wherever the fight is on equal terms, imports from abroad either lower priced or because of superior workmanship, design and quality, new developments in styling and use of consumer commodities and last but not least; the awareness among the trade that John Doe the average Canadian citizen in the cities, towns and hamlets across our great land is once again the key to the prosperity of each and everyone of the thousands of businesses; all vying for his favourite choice and SALE.

IS INDUSTRY MEETING THIS CHALLENGE?

Are the great houses of trade and commerce

reexamining their existing working arrangements to meet the rise of greater competition tomorrow? Are they still depending on their accumulated financial resources and their present great power built in foundations of granite and steel? Is human ingenuity and forceful leadership, correct interpretation of present day conditions not given the necessary leeway and go ahead? Or do these leading commercial empires relying once again on the Government to shelter them under protective price controls, tariffs, special subsidies etc.? Does the Government really owe an obligation to each and every one of the businesses in question to protect their existing set ups of doing business? Because as one leading retailer put it: "We pay taxes for choice properties, we pay federal income taxes and employ people and the Government is therefore our partner.."

Many conflicting opinions were expressed before your commission and a quick resume' unmistakably points to each and everyone trying to protect his own individual cause. Assuming that price controls at the retail end were to be granted to manufactured goods bearing a trade mark? Would that solve the present economic woes and uncertainties? Or is the problem of

granting protective rights to trade marks rooted into a more complex set of problems than appears to meet the eye. It is these circumstances that should be carefully analysed before very final decisions are reached:

1. How would price controls fit into our general constitutional and democratic way of life; the legal aspects of a law relating to a peace time economy?
2. How would price control affect industry and commerce at large? Wouldn't it curb the human ingenuity and resourcefulness of MAN?
3. Would a Price Control really help to stabilise our economy and regulate the flow of supplies to the advantage of John Doe and the benefit of the Country?
4. Is industry really in need of a Price Control, judged in terms of today's published Company operational and net profit results? Is it really so bad?
5. Are existing Government supervision and policy regarding the overall national economy insufficient in managing the people's affairs and in maintaining the present all high standard of living? Surely the Government can be trusted

on so wonderful a record.

6. Are there no other means for tackling whatever uncertainties and economic levelling and adjustment seem to take place.
7. Will any of the measures proposed affect our present way of life and our constitutional rights? We have seen many a tyrant rise under the banner of freedom and prosperity. The vital question remains: Will this or that Act really help improving our standard of living?

THE DECISION FOR OR AGAINST PRICE CONTROLS vests a most serious constitutional, economic and human responsibility; one that may enable us to maintain our present way of life; which despite all economic upheavals and unavoidable human tragedies; has proved the best that humanity has ever conceived; a free people, a free country, free reign being given to human ingenuity, human resourcefulness and human accomplishment; the sum total being an overall high standard of living for the Canadian people.

THE REAL CHALLENGE FACING OUR ECONOMY today has best been coined and phrased by the President of the United States Steel Corporation of America: Years of plenty and boom prosperity have witnessed the

emergence of a large machine of artful organisations, systems, forms, procedures, rules and Company regulations and habits which devour like a frankenstein monster all the Company power, earnings and profits; not enough elbow space left for human ingenuity, human resourcefulness in some industry branches.

COMPETITION is responsible for the PRICE WAR raging between the big businesses and the small man; once again it is a ring-side fight with the small man fighting for SALES AND OFFERING BETTER VALUES.

WHY CANNOT BIG BUSINESS MEET AT TIMES THE CHALLENGE? PRICE-PRICE-PRICE. The retail price consists of cost plus Gross Margin. THIS GROSS MARGIN MUST BE MAINTAINED AT 35 per cent; BECAUSE OVERHEADS, INEFFICIENCIES, LACK OF INGENUITY EAT UP 33 per cent; leaving a margin of Net Profit on Sales of 2 per cent; IF the status quo can be maintained. The Small Man with fewer overheads and with greater resourcefulness can operate at less and pass on the lower prices to consumer.

WHAT IS THIS OVERHEAD BUSINESS? A Letter addressed to the Chairman of your Commission will perhaps clarify the situation and its bearing on Price Ceilings and Company Profits.

"Mr. C. Rhodes Smith, Chmn. June 11, 1954
Restrictive Trade Practices Commission
Ottawa, Ont.

OVERHEADS & COMPANY INTERNAL OPERATIONS

Having carefully followed your vital proceedings I feel compelled to draw your attention to a letter written and addressed to the Chairman of a leading retail chain stores Co. The subject of Overheads was analysed and its effect on Gross margins, Prices and Net Profits. Excessive overheads; clerical, executive, administrative selling etc. due to the installation of controls from England could have been slashed by comparison with similar company operations to the tune of \$750,000. Better distribution and warehousing arrangements could have slashed the bill by a further conservative \$250,000. Better anticipation of customer requirements and more conscientious buying could have reduced mark downs and dead stock by another \$250,000. Let alone bad merchandising resulting in the loss of sales in the millions. The above Companies have been unable to improve the situation of LOSS LEADERSHIP this year and have been operating at an actual loss. A \$1,250,000 could have a very equal

bearing on better profits and better prices to consumer.

Canada prides itself in the challenge of its customer service within free enterprise and its spark plug of rugged individualism; efficient operations pass the savings to customers in the form of better quality and lower price ranges. Perhaps it would serve well to study carefully the operations of the big Companies; the very same calling for protection; perhaps this very outcry for price controls to enable them to maintain their present 36 per cent Gross Margin is the keynote to their weakness; the 34 per cent Overheads in running a business as compared to half that amount by small business; may perhaps be made to realise that fresh blood, a new approach, new resurgent ideas could as yet prove effective in maintaining their volume and their Net Operating Profits.

Yours sincerely

Jack M. Sider"

A NEW LOOK A NEW APPROACH NEEDED IN SOME OF THE GREAT BUSINESS HOUSES; the above mentioned Company has seen through some of the best years in Canadian boom prosperity

without realising a reasonable profit. After many years of No Profit operations and with many millions being swallowed up by Overheads evolving around systems, procedures, administrative and executive salaries, a new era appeared at dawn; a new board of directors with an old management was installed to cope with the situation and after a year of serious effort the following are the net results:

"The Chairman of the Board
Canadian Retail Appliances Company
Montreal, Que.

A year ago you installed a new board of directors, introduced new systems, new forms, new warehouse and supply procedures, new buying and selling and advertising set up with a view to producing millions in Net Profits. The Financial statement of your Companies appears to reveal the following situation:

Company A overheads increased by \$340,000 compared with 1953, Bank Overdraft at \$4,190,884 an increase in gross profits of \$500,000 resulting in a mere \$20,000 Net Profits. Company B Overheads increased by \$375,000 compared with 1953, Bank Overdraft stands at a \$3,500,000. Overall increase in Overheads is therefore \$715,000 excluding a few other

"private Companies in the chain; where much bad wood is hidden. In 1953 credit restrictions were lifted. Sales without deposit drew a large and unreliable crowd to the stores buying without deposit. An investigation by the writer of your credits accounts showed at least 30 per cent of your \$7,000,000 customers debt as dubious and behind in payment.

Generally 1954 appears to be a year of difficulty and adjustment for Canada. Unless you can maintain highest ever credit volume sales, the present standing overhead may grind very easily every Dollar earned to Nothing.

Yours sincerely

Jack M. Sider"

The above referred to public Company is leading in the behind the scenes fight to protect the interests and stability of the established companies and call upon the Government to take an interest in their business affairs, so that they may maintain a 36 per cent Margin. Should therefore a democratic Government with all the freedom that it tends to give to human ingenuity, daring and resourcefulness step into the picture UNLESS the welfare of the broad mass of its citizens is directly jeopardised?

HOW SHOULD THE CHALLENGE OF FALLING PRICE - COMPETITION BE MET? Well, let us revert to the pages of the thirties, the depression and read from record how a foremost U.S. retail establishment dealt with a similar situation as free men should:

"In the limbo of all mass hysteria pass those gay and giddy days of the middle twenties of the Company's drive into retail trade."

Come black October 1929. Comes January 1 1930; it reveals the Company with only five years' experience in retail business, facing the problems of steering 316 new stores through what was evidently going to be something special in the depression.

"All but few of these stores have been in existence for only two years and they are making a bid for acceptance in cities which know little about the Company and care less. The management has to learn how to run retail stores and run 316 of them at one and the same time. Its managerial and executive group consists chiefly of experienced retail men who know little or nothing about the Company, or experienced Company men who know little or nothing

"about retail. It has to keep the organisation together and function effectively while gross sales keep diving faster and faster, month after month. It has to maintain a convincing appeal to customers whose income has been mangled by panic times."

What happened is one of the most dramatic stories in the history of American business and it has never been told before except in fits and starts, never altogether in one piece. After financing the operations of 316 retail stores largely out of its own accumulated reserves and without calling upon its stockholders for a cent, the Company buffets the depression of 1930-34 and emerges in 1935 to show a consolidated five year net profit of \$50,204,764. The philosophy of the above Company is best explained as follows:

"SELL FOR LESS -- SELL for less by cutting the cost of Sales. Reduce to the absolute minimum the expense and OVERHEAD of moving goods from producer to consumer. Make Less Profit on each item."

WHAT IS THE KEYNOTE OF RETAILING?
Selling, Selling at Competitive Prices.

Retailing in a democratic free society can best be explained as the relationship between retail store and customers -- its manufacturing sources -- its stockholders -- its employees -- oh its public. These are the important intangibles which will always be vital factors in the success of the Company -- behind the representations of balance sheet mathematics. Any Company in our society could not live long with the friendly cooperation of its customers, its sources of supply, its stockholders, its employees.

WHAT MAKES A RETAIL COMPANY FUNCTION?
WHAT ARE ITS PROBLEMS? In 1953 during the months of August and September the writer has understudied the operations of the famous Marshall Field Department store and the following is a letter written summarising the experience.

"Mr. J.L. Palmer, President October 1, 1953
Marshall Field & Co. Dept. Store,
Chicago, 1, Ill. U.S.A.

HUMAN INGENUITY-TEAM WORK-GRASS ROOTS

Your brief outline of the Marshall Field democratic policy, your faith in in the resources and ingenuity of men given free expression within the major policy framework of investment Control,

"stock turnover, complete assortments, price policy, etc. appears to be weaving like a glittering golden thread through the ranks and minds of all your major executives and buyers' levels -- a group of men loyal and faithful to you:

1. All your key executives and buyers are most certainly intimately linked with your trend of thinking and must afford your Company a first line of powerful action.
2. Your merchandising policy based on a separate men's store, budget floor, main promotion floor and the general 10-floor arrangement each representing the best counter display the widest most complete merchandising range by style, colour, size and price line -- indeed a dreamland for sales and customer service.
3. Your systems for buying are based on forms and cabinets in vogue in the U.S.A. -- however do they truly interpret each of the buyers' human needs? Aren't essential facts buried in a mass of superfluous details? Are vital trends on season, style, price line and stock visible for immediate action? Do they really and effectively help in building

"volume? Aren't they too costly,
too detailed and complicated? Why
not give some thought to strategically vital data only?

"Company OVERHEADS indirectly connected with buying, selling, store maintenance are encroaching seriously on final profits -- the liquid resources and profit making ability of the Company are closely linked with your ability to maintain services economically and profitably.

Yours sincerely,
Jack M. Sider"

COULD A GOVERNMENT STEP IN AND HELP PRIVATE BUSINESS RUN ITS OPERATIONS BY PRICE CONTROLS? Or other measure? Who are all these well established business houses of today?

OVERHEADS AT SOURCE IN A SMALL COMPANY
(A) AND IN A NATIONAL CHAIN-FORMS.

Let us take a walk along St. Catherine W and we are encountering the hustling and bustling. Mr. A. with cars to the grounds for footsteps of customers -- selling refrigerators, television sets, electrical appliances at 15 per cent below normal retail ceiling and yet doing well:

Company A Forms: Order Sheet Trading Book
 8 Receiving Book Petty Cash record
 Invoice Record Credit account
 Sales Book agreement

Company B. Forms: Used in each and everyone of the
 45 Stores across the City. Op-
 erating all the records as set
 out below in the Stores and
 then duplicating the checking
 work at Head Office costs all
 in all \$3,500,000 including
 supervision and administrative
 controls:

		Inch	Columns	Items
Day Book Summary.....	9 x 13	" -36	" -14	" -
Stock analysis	8 x 12	" -28	" -20	" "
Merchandise Purchase requisition.	8 x 11	" -4	" -15	" "
Merchandise Transfer record	6 x 9	" -4	" -	" "
Pick Up Tag.....	5 x 8	" -4	" -	" "
Goods returned book	9 x 15	" -15	" -	" "
Goods inward book	8 x 26	" -19	" -	" "
Stock Book	8 x 15	" -12	" -	" "
Stock Tickets	2 x 5	" -9	" -	" "
Schedule of Certified invoices ..	8 x 15	" -6	" -	" "
Salesmans Order book.....	7 x 8	" -14	" -	" "
Sales Order Book	8 x 11	" -19	" -	" "
Proposal Form	5 x 8	" -40	" -	" "
Application Form	5 x 8	" -44	" -	" "
Weekly Booking	11 x 15	" -15	" -	" "
Date of Delivery Clips	8 x 15	" -9	" -	" "

		<u>Inch</u>	<u>Columns</u>	<u>Items</u>
Credit Reference Book.....	8 x 14	"	-10	" - "
Cash sales	5 x 9	"	- 5	" - "
Account ledger sheet	13 x 17	"	-55	" - "
Cash sales ledger sheet	13 x 14	"	-15	" - "
Commission sheet	8 x 12	"	-11	" - "
Cash book summary	6 x 8	"	-16	" - "
Petty Cash Disbursement	6 x 18	"	- 9	" - 4 sets
Trading Account	8 x 14	"	-26	" -36 Cal- culations
Schedule of Expenses	11 x 16	"	-24	" -19 "
Expense transfer	5 x 8	"	- 7	" - "
Trading analysis sheet	7 x 10	"	-17	" -12 "
Collection call slip	4 x 5	"	- 5	" - "
Collectors report	5 x 8	"	-22	" - "
Discount rebate sheet	4 x 8	"	-14	" - "
Postage Book	12 x 17	"	-22	" - "
Complaints book	14 x 16	"	- 8	" - "
Repair card	4 x 6	"	- 7	" - "
Recommendation book	12 x 16	"	-12	" - "
Change of address	9 x 11	"	- 6	" - "
Out of Order Book	8 x 13	"	- 6	" - "
Progressive Recommend Book	5 x 7	"	- 7	" - "
Mailing register	13 x 14	"	-21	" - "
Delivery note book	19 x 20	"	-84	" - "
Branch expense book	16 x 19	"	-27	" -12 "
Cash Balance sheet	9 x 11	"	-14	" -10 "
Foreign payments book	7 x 9	"	- 8	" - "
Pass Book	3 x 6	"	- 1	" - "
Cash receipt	11 x 20	"	- 8	" -30 Entries
Temporary receipts	4 x 7	"	- 9	" - "

OVERHEADS IN MANUFACTURING? This can best be explained by quotations from financial reports of two well known Companies; both having made millions. In 1953 they overexpanded plant capacity, increased stock levels beyond requirements and have instituted new controls and procedures unwarranted by the size and nature of the business to the point where:

COMPANY A from Cash balance of \$456,345 in the bank at the end of fiscal year 1952 found itself burdened with special Debt from private banking source at high rate of interest of \$775,000 repayable over ten years.

COMPANY B from cash of \$891,246 in the bank at the end of fiscal year 1952 to a bank overdraft of \$2,448,092 and a stock increase from \$2,213,422 to \$4,091,847 and with inventory values reduced since by 20 per cent of original cost.

WHAT HAVOC INCREASED OVERHEADS HAVE WRAUGHT WITH PROSPEROUS BUSINESS? A brief from an analysis on the subject presented by the writer to the chairman of the Board of Company A as mentioned above:

"March the 1st, 1954

In 1952 you have seen the wonderful realisation in volume business and in profits of ground work laid in 1948-1951

"with reference to expansion of production facilities, inventory and management policies. 1952 was a special spectacular year for sales and record breaking production. In 1953 sales took an increase compared to normal 1951. BUT OVERHEADS were prohibitive. A cool \$200,000 was sacrificed to liberal spending policies; the failure to realise that the 1952 record of sales, due to government orders of three millions, could not be maintained, in a peace time economy. In 1954 you were faced with highest ever deferred debt liabilities and current bank overdrafts, and over a million dollar in excess inventory, all incurred in the closing days of 1953. Whatever the farsighted Company policy may be, it is certain that because of lower sales targets that every Dollar will have to be husbanded very carefully, so that by the end of 1954 a greater liquidity could be accomplished."

WHERE IS PROGRESSIVE REDUCTION IN OVERHEADS WITH
COMPARATIVE FIGURES IN INDICES: SALES INCREASES ???

	- SALES	- OVERHEADS	- GROSS PROFIT	- NET PROFIT
-1942	- 100	- 100	- 100	- 100
-1943	- 103	- 114	- 104	- 107
-1944	- 116	- 127	- 121	- 145
-1945	- 91	- 149	- 97	- 54
-1946	- 114	- 169	- 119	- 101
-1947	- 159	- 215	- 145	- 151
-1948	- 201	- 237	- 181	- 209
-1949	- 245	- 254	- 194	- 217
-1950	- 224	- 276	- 181	- 159
-1951	- 291	- 327	- 256	- 231
-1952	- 551	- 444	- 476	- 795
-1953	- 364	- 493	- 332	- 313

The operations at the retailing End:

OVERHEADS IN RETAILING play a vital role in terms of net profits. The importance of human talent, team work, initiative cannot be over-estimated in the conduct of big retail business. How the containment of overheads has a bearing on Net Profit is well illustrated by two Companies -- leaders in the retail industry. Both firms went bankrupt in 1930's, both were reorganised and new ownership and new management substituted for the old.

COMPANY A has been reorganised with completely new buying office, accountancy office,

vesting responsibility for reordering and sales promotion in superintendants and Store Management. This Company has made spectacular headway in Sales and in Net Profits, it has anything from 2-\$3,000,000 Cash in the bank and extensive property holdings.

COMPANY B -- a family business, all executives were from the family with no allowance for talent. The old management was retained, procedures were constantly changed to the tune of millions in expenses. Despite spectacular boom year, no profits were made over the years and a bank overdraft of \$7,000,000 is the best example by comparison

C O M P A N Y -A-				C O M P A N Y -B-	
SALES	INCOME	NET PROFIT		NET OPERATING	NET PROFIT
	b.Taxes			PROFIT	
100	-000	-000	1934	-000	-000
137	100	100	1935	-000	-000
175	550	610	1936	-000	-000
184	955	1130	1937	70	14
208	965	1850	1938	35	15
209	815	1500	1939	42	28
254	1750	1950	1940	52	96
323	2890	2240	1941	102	168
396	4190	2940	1942	150	135
437	5050	2900	1943	-000	-000

C O M P A N Y -A-				C O M P A N Y -B-	
SALES	INCOME	NET PROFIT		NET OPERATING	NET PROFIT
	b.Taxes			PROFIT	
438	4740	2850	1944	200	-000
449	5320	3170	1945	184	248
500	5850	3550	1946	220	342
573	6510	4640	1947	265	470
700	8220	6150	1948	150	295
875	9250	7550	1949	250	590
965	11200	9010	1950	175	314
1040	11550	9050	1951	260	545
1130	11950	7550	1952	140	191
1450	17500	10850	1953	160	250
1500	17000	12500	1954	240	390

1954 .. COMPANY A-Net Profit-\$1,575,473 -Sales -\$35,000,000
 1954 .. " B- " " -\$ 182,062 - " -\$30,000,000
 1954 .. " A-Cash -\$2,095,926 -W.Cap1-\$ 3,849,000
 1954 .. " B-Bank Loan -\$9,000,000 - tal \$ 6,461,700

HOW IS THE GENERAL ECONOMY COMPARING
 BY STOCK EXCHANGE MEASUREMENTS? What is
 the real state of our economy under our
 system of free enterprise. A stock exchange
 review of a leading Brokerage and Invest-
 ment firm reveals startling figures on the
 great profits made in well anticipated buying
 and selling of securities; this is the best
 reflection on the state of the health of our
 economy;there does not appcar any cause
 for alarm, except for the need of some

adjustment to a peace time economy.

THIS IS THE BEST JUSTIFICATION for a
free enterprise and for the policy of
wise Government:

<u>SUMMARY OF INVESTMENT PORTFOLIOS:</u>			<u>1 9 5 3</u>	<u>-</u>	<u>1 9 5 4</u>
			COST		MARKET
Government Securities	100	-	96		
Other Bonds	100	-	93		
Banks and Financial	328	-	470		
Merchandising, Retailing	190	-	286		
Foods, Grains, Mills	412	-	438		
Paper and Pulp	395	-	580		
Fine Paper	105	-	170		
Mining, Base Metals	560	-	718		
Chemicals, oils, rubber	300	-	340		
Containers	211	-	278		
Construction	140	-	180		
Public Utilities	500	-	611		
Textile Leather	136	-	149		
Iron and Steel	580	-	675		
Transport	170	-	230		
T O T A L S	4,493	-	5,565		

ONLY YESTERDAY TODAYS MILLIONAIRE EX-
ECUTIVES-- as history recounts -- have had
their humble origins in the slums and their
businesses in a cellar and in a halt in
the wall. Men from the east have arisen

and through sheer superior intelligence, decision, ability and talent to read customer needs accurately have been able to foresee future developments with clarity that they were able to build with bare hands empires of trade and commerce. CAN THE SUCCESS OF A BUSINESS BE PERPETUATED? In the steel and granite of its properties, in its systems, machines, filing cabinets and in its resources? Business is like a river; fresh water every day, new sales and new accomplishments alone can perpetuate success. Today's business is like golf playing -- it is a game of personal skill and talent and ingenuity -- all past glories and victories can be wiped out at the strike of a ball -- many a family business went down, because its successors were men unequal to the task of competing for sales and business in a free democracy-- WITHOUT SALES the wonderful wheels of production must come to a halt and the lights of offices and the hustle and bustle will dim and come to an end -- SALES IS THE LIFEBLOOD.

Our Government today no doubt takes a close interest in the economic affairs of the country and has gone a long way from the laissez faire of irresponsible freedom

and its evils; the welfare of the nation and its diversified classes of business is very much the business of the government. Measures to control inflation, avoid deflation and depressions through control of output, the health and welfare of its people, its living standard etc. are always prime considerations on the agenda of its ministers. Our laws of trade and commerce protect the broad masses of business people, trade union laws protect the workers.

In the final analysis however the worker, the butcher, the baker, the banker, the tradesman, the manufacturer, the wholesalers, the retailers, the student, the scientist are each to their own in their own field of endeavour, free to make decisions, to adopt a course of action as free men unshakeled by rules and regulations within the RULE OF LAW AND MORALITY and our way of life. IN CONSIDERING PRICE CONTROLS THIS VERY constitutional issue of free enterprise seems to be at stake in effect it means safeguarding a substantial margin to established business houses against the small trader, who by sheer ingenuity and skill is able to operate on lower overheads and to pass on the benefit of lower margins to the customers in lower sales prices.

THE GREAT TRADING AND RETAILING COMPANIES of today have driven the small man from many a business because in growing they have developed buying power and specialised marketing resources enabling them to pass on the benefits of buying skill and excellent selection across the land; by men specialising in securing for lower prices and quantity discounts; to the consumer public, in terms of beautiful stores, restaurants, fresher merchandise wider assortments by style, colour and range, more up to date commodities, lower prices, better and no doubt more reliable service -- above all they have afforded the public a sense of safety. As long as this lead can be maintained the great Companies remain prosperous.

YET in every trading and shopping centre we continue witnessing small men arising out of nowhere to commanding positions this by sheer ingenuity, closer understanding of today customer requirements, better anticipation of customer needs -- all these enabling them to prosper in face of serious opposition from the big boys. Should a little man continue stumbling on good buys and good prices, the public will afford him equal patronage. An individual man any day can use his initiative without being hindered by forms and red tape of

big business, being closer with his ear to the rumbling of public wants. The Head Office of a large business with hundreds of artificial and superfluous systems and procedures and methods of control do not really produce, unless the buyer makes use of them and can translate figures in action-- often this is not the case.

DOES A GOVERNMENT OWE ANY ONE OF THE BIG BUSINESSES AN OBLIGATION? Because they have invested their life savings and are giving employment to many? No democratic way of life could cope with such a situation. We have seen depressions, we have seen men rise to stardom and heights of power and wealth, only to crash into oblivion. The Government can only intervene in crises of a general nature; it never helps individuals or sections, because it cannot run their business anyhow. MAN must be free to make or break his own personal way of life. Man must be free to make decisions, evaluate situations and act accordingly. It is a constant race for buying and making A Sale; with the present growth of competition the success of a sale depends on better quality, better styling, better values, better prices. He who can produce the winning formula for public wants and place himself ahead of his competitors will be the success

of tomorrow. He who fails, will be doomed to failure; to avoid this calamity prices come tumbling down Controls or No Controls and so new price levels are reached -- a game of courage, great endurance and consistent perseverance.

THIS PRICE CUTTING WAR you are called upon to investigate is therefore not due to the absence of a law -- it is rather the result of obvious keen competition.

What is a trade mark? Any manufacturer attaching a label or registered name can place himself within the meaning of the law relating to trade marks. In case of the big boys the market would obviously be cornered and monopolies the end result. During the war we have known and seen the development of a complex structure of price controls, the setting up of a price ceiling for the manufacturer, wholesaler and the retailer. The aim was one of maintaining a system of equitable distribution and fair prices, all with one view: How best to utilise shortages of existing and available supplies. Gross margins were established and standards of quality strictly adhered to. Today however having reached into an era of abundance and plenty the rules are no longer applicable. Just as in the era of shortages we paid

bonuses and extras to circumvent price ceilings, today the opposite is true -- trade discounts and cash allowances, good trade-ins for old merchandise and free extras are all artificial means that would break the back of any price control, UNLESS as we said the big boys corner the market and lucratively create and operate price cartels.

What determines the price level of a commodity? It is very hard to generalise on the subject, except to say that each class of commodities finds its true level as a result of its true evaluation and its selling potential. Export tradesmen vie with each other for a correct anticipation of customer demand in price and in volume, customer tastes, customer sales ability, or resistance. True that the laws of supply and demand have wrought havoc with vast sections of the business community and to have brought about various depressions -- but then who can really control these currents except in a general way. In terms of practical business, success in selling depends on many factors, such as:

1. Planning the stock that should be carried for estimated sales.
2. Ability to buy goods that are saleable.

3. Ability to sell goods with minimum loss through careful merchandising.
4. Careful control and follow up of purchases.
5. Judgment in pricing merchandise so that it will sell rapidly.
6. A mark down policy; or the cutting of prices until it sells.
7. Maintenance of an efficient organisation.

THE MOTOR INDUSTRY operates through franchise dealers. Prices are catalogued. A month ago the writer was in the market to buy several trucks on behalf of a retail chain store. He was surprised at the keenness of competition; the listed prices were quoted by every one of the fifteen dealers, yet specials, free accessories, large trade discounts, and extra special allowances for trade-ins made the original price artful. A new model car appears on the market every year with special features; no dealer can afford to be left with new previous years cars on his hand-hence price cutting and special efforts to sell out before the new line is revealed. Can any Government step in to regulate the market and prices? Or should it be left to the judgment of expert dealers to make the best deal and most advantageous sales possible.

THE LADIES, MENS WEAR AND CHILDRENS WEAR INDUSTRY IS primarily subject to seasonable requirements, the keenest and most competitive in the country, it gathers momentum with volume sales during Easter, summer and early fall and declines during January, February, July, December months. In its very nature, the keen buyer picking the right styles, fashionable colours and correct sizes and in sufficient depth of number and assortment -- in one word -- he who can anticipate accurately enough the unpredictable requirements of a woman shopper will be successful in his season. He who has been fortunate in two out of three seasons is already recognised as leader in the industry. The other fall by the wayside. We have seen men of keen intuition and foresight create empires in the trade. Yet just as soon as they retired, the business faded away -- it all appears to evolve around the head of the business who is able to gauge requirements, make commitments to assure supply, and then proceed to foresee styling and seasonable trends. Saleable merchandise rightly priced, SELLS -- Unsaleable merchandise branded or otherwise must be sold at any price before the season is out and he who takes the earliest price cut or mark down, takes the smallest loss. Visit any store

at the end of the season and watch the scramble to sell -- at half price, at quarter price, at dollar specials at any give away price. The merchandise must be cleared before the new season commences. Can any Government law and regulation control prices and levels of this seasonal industry with its branded and unbranded merchandise.

WHAT ABOUT THE TELEVISION AND ELECTRICAL APPLIANCES? This industry has grown in magnitude in recent years. The importance of television sales was best reflected in the fact that six stations began telecasting in 1953 and by the end of 1954 it is expected that 24 television stations will be in operation across Canada. Television receivers owned by Canadians at the end of 1953 approximated 600,000 sets and the estimate is that in the next two years there will be a further 1,000,000 sold.

The industry is as yet in a stage of development. New inventions, new improvements are highly publicised every day. The industry recognises that intensified and aggressive merchandising alone can maintain the rate of improvement achieved in previous years. Old styles and stocks cannot sell at any price. What should a manufacturer or retailer do with unsaleable stocks? Or

stocks less advertised? The old law of supply and demand comes into force; each and everyone tries to get the best prices possible, irrespective of whether it provides a profit or a loss. Automatically the less expert business man is pushed out of the game and the shrewd buyer and business man continue to advance and profit.

Another vital factor in the price cutting war is the element of COMPETITION FROM ABROAD. Canadian manufacturers and retailers are called upon to meet this foreign competition--in this case the retailer buys from abroad disregarding Canadian manufacturing, provided saleable merchandise can be had. No doubt serious losses were incurred by many an industrial and retailing organisation and once again No Price Ceiling and no control regulation penalising a retailer for underselling could prevent a tradesman from selling his bad stock at the best possible price obtainable. Business men from experience do not discuss in generalities the question of price ceilings. The shrewd expert buyer will evaluate a marketing situation and accordingly, price control or no price control.

The prosperity of Canada is dependent on exports, hence a working formula is sought by the Government to maintain two way trade--

to shut off foreign competition from Canada would react in equal penalising tariffs from abroad and the country would land in a chaos -- hence the care with which tariffs are considered by the Government from the overall economy point of the country. Today the Canadian market is inviting competition from producers throughout the world to a degree never experienced before. This is a result of the policy of the Government granting Canadian manufacturers only moderate tariff protection: Adherence to the principle agreed upon through the general tariffs and trade agreement which limit restrictive practices to protect domestic industries and the free convertibility and strong position of the Canadian Dollar in terms of other world currencies.

There is of course an outcry among many an industry for urging the Government to raise the tariff walls. It is pointed out that the need for a reassessment of our Canadian economy and a closer examination of our exports imports in relation to Canada's present trade problems. It is pointed out that this country is in grave danger of losing the momentum economically which has been built up in post war years. It is urged that tariff and custom regulations which are by tradition controversial issue in Canada

be modified to meet the domestic realities of this rapidly expanding industrial nation. However as pointed out tariffs are closely linked with our need for exports. Vested interests in the Canadian industry are therefore urging Price Controls on branded lines on the one hand and High Tariff walls on the other, even though the more responsible elements admit that inasmuch as tariffs are so closely linked with our valuable exports drive, that mutually satisfactory agreements with foreign lands are unavoidable.

BUT SUBSTANTIAL HEADWAY AND INCREASED NET PROFITS have been registered by all major appliances manufacturers, despite the outcry. Headway in production and sales is substantial in 1953 and has been continuing on the upgrade during 1954. The small man has no chance to enter this profitable manufacturing field and it is dominated by a FEW GREATS who reap all the rewards and benefits of the most expanding business in the appliances field.

MARCONI RADIO-Profits before Income Taxes:

1953-\$2,584,243

1952-\$ 823,300

CANADIAN WESTINGHOUSE - Profits before Income Taxes:

1953-\$7,511,688

1952-\$5,744,984

The Leading Companies despite the outcry for protection realise that it is very much within their own power to improve their competitive position on the market. In response to this threatening competitive pressure, all Companies have already inaugurated strong programmes for streamlining production methods and for coordinating all phases of cost improvement activities. Company wide cost improvement programmes are intensified and numerous cost improvement ideas and practices have been put into effect.

Sales and distribution organisations are revitalising their efforts in a nationwide merchandising programme designed to improve the Companies participation for its products. The manufacturing Companies realising that price control and no price controls -- sales will be dependant on their ability to improve products and to offer consumer greater advantages for service and use. In the best tradition of free enterprise the following citations may be quoted from the report of a well known appliances manufacturer:

"During 1953 a number of advances were made in the design and production of electrical appliances. Among them were improvements in induction and

"brazing, spectographic analysis of materials, the application of stress analysis to component parts and electrical machines and better technical understanding of the performance of bearings and their lubrication.

Therelastic insulation

Hot spray painting

Foseriting

Potted circuits

Printed circuits

Developments in engineering are primarily sparked by a need for maintaining SALES. Protect industry with barriers, control prices and perhaps many a Company would not feel justified in making such gigantic efforts to improve their products and to inaugurate new innovations and to launch costly research programmes."

HOW VALUABLE, PROFITABLE AND GREAT A BUSINESS -- this television and appliances section is, can best be evaluated and gauged by the important space for advertisement it buys from the Newspapers across the land -- The Montreal Star, The La Presse, The Toronto, Winnipeg, Calgary, Hamilton, Vancouver, Saint John, Halifax and all the hundreds of weeklies, monthlies across the land from coast to coast from the Atlantic

to the Pacific carry a high percentage of total advertising -- the demand is great, the profits are gratifying, the fight of the Big 5 in manufacturing level is serious and perhaps deadly earnest -- let us quote one days comment in the race for business as illustrated in the Montreal Star:

"MORGANS SEPTEMBER SPECIAL:

Just in time for the new season -- Once again Morgans hits the jackpot with Console TV offer to save you Dollars -- RCA Victor Yorktown, Manufacturers suggested Price..... Price \$329.00. *22 tube* Console, the Morgans featured value

Price \$229.00

We bought a large quantity to assure you delivery -- you are doubly assured of top -- Morgans -- and \$229.00 is all you pay -- Antenna and installation are included -- note the features".

22 Tube chassis with new transformer circuit for greater power, constant and brighter pictures -- assuring good fringe reception from expected American Stations.

Full console Cabinet in striking design, with natural wood finish. Choice of walnut mahogany oak.

17" picture tube, with RCA Victors famous MAGIC MONITOR circuit that acts as authentic automatic engineer inside your set.

12 channel selection gives you full range choice, with ample room for adjustment to UHF.

Phono Jack built in, ready for record player attachment with front mounted switch.

Front mounted speaker for clear tone.

Full Factory 3 months guarantee on parts and 1 year guarantee on picture tube. Hurry -- Hurry -- phone or wire at Morgans' expense -- yes you will have your set well before the week end.

HARTNEYS SEPTEMBER SPECIAL:

For unforgettable value in Television see Hartneys first and here the buy you cannot miss --

BRAND NEW 21"

..... FAMOUS G.E. CONSOLE

With Magin Daylite tube built by the famous General Electric Co. - One of the world's greatest manufacturers.

BUILT TO SELL AT \$429.50.

..... AT HARTNEYS ONLY - \$299.50

CHECK THESE OUTSTANDING MAGIC FEATURES.

Black daylight tubes-Famous G.E. invention provides excellent picture detail in brightest room.

Dynapower speaker affords clear tone reception from all distortion.

Full channel coverage. 12 active channels completely covered outlet for UHF is provided.

Amplified operation -- built in antenna. Picture stabiliser and manufacturers one year guarantee on picture tube.

CHOOSE YOUR OWN CREDIT TERMS AT HARTNEYS
EATON'S SEMI ANNUAL SALES:

Clearance of 1954 Model -- Viking 21" Television consoles Semi Annual Sales Price \$339.00. "My what a beautiful TV set and in such good taste too" -- That's what your friend will say when you add one of these 1954 21" Viking sets to your room -- Just think -- and end of clearance brings this set to you at this remarkably low price Tuesday.

21" cylindrical picture tube.
Sloping safety glass reduces glare
Local suburban and fringe arc adjustment

Easy rolling casters for
convenient moving.

Beautiful walnut veneer finished
cabinet.

Enquire at Eatons Factory service contract
designed to protect your television investment.
Serviced at Eatons Own Service technicians.
Remember No down payment. Budget terms plan
purchases.

What are the real facts behind the story
of this great price cutting war in TV and
electrical appliances. Perhaps it can best
be explained by shifting our view to one of
a wealthy and most powerful retail company.
In analysing the price war his trend of
thinking was as follows:

"In the furniture, carpets, rugs
chinaware, household utensils we can
hold our own large assortments are
necessary, colours, styles, price
range, sizes must be carried. Early
buying months ahead is a must, ware-
housing facilities essential, trucking,
distribution, credit facilities. For
it gigantic financing must be had.
Early and ahead of the season commit-
ments are a must to assure supply,
careful follow up on sales and reordering
assuring the best sources of reliable

supply-all beyond the reach of the small man. To cope with as complex a machine half a dozen \$20,000 a year and upward executives are installed dedicated to their full time and specialised scanning of the market for good buys and for gauging good values and trends -- these assisted by an array of clerks, secretaries, forms, cabinets, cars, etc. The small man has to fight barchanded and on unequal terms. However in the appliances and electrical division there is no choice and no assortment. Delivery is excellent. A television, a refrigerator, a heater, a cooker whether it be displayed in lush saloons, or in a mans wear store, or in a warehouse, or in a hole in the wall store is just IT- the manufacturers guarantee of service is generally applicable. No expert buying needed, no overheads necessary and yet the big retail store is subject to 32 per cent overhead, whilst the small man can suit himself and have a free run for his money."

In our free democratic society the large corporations are of necessity able to account for large volume business - the small man is

pushed hard and fights for his life in the grocery business, in the furniture trade, in the 5 cent to \$1.00 Variety business - he has neither machinery, nor the capital and resources to compete with the big lush stores YET the small man never turns to the Government for protection. With his ingenuity and resourcefulness he seems to fight and to survive. NOW the big business corporations are a disadvantage due to their serious overheads and the artfulness of conducting some of their business-- they are turning to the Government lobbying for price protection -- and still in the over-all they are declaring largest ever dividends.

A SMALL MAN DOING business in a basement store these past ten years has put it honestly:

"Why of course we sell cigarettes for 37 cents -- the grocery stores for 33 cents. Sure my customers have every right to buy there in the lush chain stores. We pay \$3.31 a carton and the Chain Stores at \$3.30 plus the 7 per cent wholesale discount. They still make money, my earnings in cigarettes were cut by half."

The Cigarette warfare is becoming a public scandal inasmuch as tens of thousands little men and women, sick and ailing, incapacitated and restricted, the pensioner at dawn of life -- they account for a vast army making or eking out a meagre living the only way they can -- 4 cents per package profit, turnover big, no dead stock, no specialised buying, no expert calculations. JUST AN HONEST FRIENDLY SERVICE. Haven't the Grocery chain store wrought enough havoc among equally small men shopkeepers in the tens of thousands. THIS IS OBVIOUSLY REACHING AT THE LIVELIHOOD OF A BROAD SECTION OF THE POPULATION, who in a sense collect taxes for the Government. Morally and as a matter of public equity something ought to -- something ought to be done.

THE MENTALITY OF THE LARGE CORPORATIONS trying to maintain their present overheads and their superiority is a challenge of the first magnitude. Let each and everyone of the great retail houses face up squarely to the facts of doing business in a free society, make the necessary housecleaning adjustments to be able to continue their leadership on fair and equal terms of may the best man win.

THE CHAIRMAN: Do you wish to make any comments on the brief, or do you prefer to answer questions on it Mr. Sider?

MR. SIDER: I have no further comments.

MR. WICKWIRE: I have one or two questions. You have referred throughout your brief to the fact that you are very much opposed to government price controls?

MR. SIDER: Yes, sir.

MR. WICKWIRE: In peace time?

MR. SIDER: Yes, sir.

MR. WICKWIRE: I take it that you are also very much opposed to a system of resale price maintenance whereby any manufacturer would have the right to set the resale price on his article?

MR. SIDER: I consider it in most lines an impossibility.

MR. WICKWIRE: An impossibility?

MR. SIDER: Yes, -- unless it would lead to price fixing cartels because with a great deal of legislation, and so on, it might create a new grey market. When there is an abundance of supply and people cannot get rid of it at registered prices, they try to sell it at a discount level and at other prices, to find a loophole.

MR. WICKWIRE: Or phoney trade-ins.

MR. SIDER: Yes.

MR. WICKWIRE: In some manner.

MR. SIDER: Yes.

MR. WICKWIRE: So you say that it is an impossibility to maintain a system of price controls?

MR. SIDER: Well, it would cause a great deal of harm, primarily to the small man, and it would lead to cartels.

MR. WICKWIRE: Your brief seems to direct itself against the large producer or the large manufacturer, and it indicates that he alone is the one asking for resale price maintenance.

MR. SIDER: In certain fields.

MR. WICKWIRE: But there has been evidence or a request made before the Commission by a great number of organizations on behalf of small businessmen requesting resale price maintenance. What is your comment on that?

MR. SIDER: Well, from what I have read, the cigarette retailers are primarily concerned about price control. In my opinion the cigarette trade is a field in itself. The general principles applicable to trade in ready-to-wear or appliances or consumer goods, would not have the same bearing on the cigarette trade.

MR. WICKWIRE: Would you put out of your mind for the moment the cigarette trade. We had before us this morning the Retail Hardware Association.

MR. SIDER: Yes.

MR. WICKWIRE: And their first request or recommendation to the Commission was that resale price maintenance be permissible.

MR. SIDER: Well, I had some experience in the hardware trade, and I realize that some of the bigger hardware retailers have taken on certain loss leaders, and they are dropping them on the counter at half price. They are doing a great deal of harm to the small shopkeeper.

I personally would not say that I am the champion of the big boy or the champion of the small boy. I am the champion of free enterprise. This is my analysis. But in my own experience I have seen that while the inefficient small man simply sings and nobody hears him, the inefficient big boy in big retailing -- well, everybody can hear him clamoring for price control. But I am primarily the champion of free enterprise within the country.

MR. WICKWIRE: Now, to come to your exceptions contained in your brief, and to which you have made reference, namely, the tobacco trade --

MR. SIDER: Yes.

MR. WICKWIRE: Do you think that the small tobaccoist or the small retailer in tobacco products should be given a chance to compete with the chains.

MR. SIDER: The question of competition in the cigarette trade should not really arise, at all, because the price of cigarettes is 37 cents. The retailer at 37 cents is allowed 4 per cent, profit and he collects the taxes for the government.

In the cigarette trade there is nothing to compete about. When you take a car or when you take a refrigerator or when you take a dress or a suit or a pair of shoes or any other consumer commodity, there is always competition, not only for price, but for styling and for values and for anticipated customer requirements, and so on.

However, in the case of cigarettes it is just as in the case of liquor. It is a question of selling it at a very low profit and collecting the taxes for the government. I do not think the case of competition enters into the picture at all.

5 MR. WICKWIRE: It has certainly entered into the picture, Mr. Sider, that because the chains or certain of the big chain store operators have been given the privilege of buying from the manufacturer at wholesale prices --

MR. SIDER: Seven per cent.

MR. WICKWIRE: -- they are able to sell at retail and still make a profit --

MR. SIDER: Seven per cent.

MR. WICKWIRE: -- to the great consternation of all the retailers who cannot buy at such prices. Have you any suggestions to make about this situation that might be helpful in the circumstances?

MR. SIDER: I have very little inside contact with the cigarette trade. I have been primarily connected with the chain stores outside that field. But in the course of my travels in England, Scotland and Wales, and in Canada and the United States, as I have mentioned, I have noticed that a lot of small men are depending for their livelihood on selling papers and on selling cigarettes. Because I have always noticed that the big chains in the cigarette trade really sell a very small percentage of the total sales of cigarettes.

And therefore, when the grocery chains are obtaining their wholesale seven per cent and the retailer, being a small man, cannot possibly buy direct from the manufacturer -- because the wholesaler is the link between the manufacturer and the retailer, you see, and he gets his usual seven per cent or ten per cent for the service of distribution.

Well, this puts the small man at a tremendous disadvantage, because the big chain stores are getting seven per cent profit. And,

considering the enormous turnover and very little overhead they have in actual selling of cigarettes, compared to the small man, they are making a profit, and the small man is suffering very badly. To me it is primarily a question of public morality. And I have singled out cigarettes as a unique exception from any other trading circumstances.

MR. WICKWIRE: And the only exception.

MR. SIDER: And the only exception, yes. It is just a question of going down the street and seeing the small man, the old man, the ailing man, the men of that type, making their living from cigarettes because they cannot work at anything else. And if you analyse it you will find there are dozens like that. It only struck me as a question of public morality.

MR. WICKWIRE: Have you any suggestion to the Commission as to how that might be cured?

MR. SIDER: Well, I am not too familiar with the laws of Canada, but I believe that a private Act of parliament, which should not create a precedent for anything else, could be introduced, to maintain the price level of cigarettes -- which is really dominated by the Chancellor of the Exchequer. If he has a larger tax on cigarettes, then the price of cigarettes goes up; if the taxes lower, the price goes down.

MR. WICKWIRE: I suppose even if such an Act were passed, you would still run into the

difficulty of enforcement of it, would you not?

MR. SIDER: Well, I believe it would be easily enforced, because it would be difficult to enforce it against the small man, but it is not difficult to enforce the large chains. And it is primarily the large chains in this case who are really the guilty parties.

MR. WICKWIRE: That is all I have to ask.

MR. FAVREAU: I take it that, in your view, this is one case where, even taking for granted the greatest extent of efficiency on the part of the small retailer, then he could never be able to compete, anyway?

MR. SIDER: In cigarettes?

MR. FAVREAU: Yes.

MR. SIDER: In cigarettes there is no question of competition, because he only gets four cents a package, and there is no dead stock. It is just a question of buying and selling, and collecting the four cents. And so the small man, who forms the large portion of business, he has no inefficiency. He has no assistants; he has no controls. The small man sells cigarettes, from a hole in the wall or from a basement store,,perhaps where the overall rent is very low. And therefore the question of suggesting that the small man become more efficient does not arise. Because efficiency would apply

to consumer goods, generally; but it could hardly apply to cigarettes, just as it could not apply to the sale of whiskey by the provincial government.

MR. FAVREAU: In your surveys or your recent experiences, have you had occasion personally to ascertain that a considerable proportion of those so being helped by the sale of cigarettes heretofore have been forced out of business or seriously affected? Have you had personal experience in this connection, or is that your thought that you are expressing at the moment?

116 MR. SIDER: My experience is only indirect. But I would say that the small man selling cigarettes is not very often forced out of business because his overhead is so low, and sometimes they occupy little stores and little premises, and they sell other types of merchandise. And the only result is that their earnings are cut very seriously. Because they do not usually depend just upon cigarettes.

But I have made a survey among the small men, and the average man told me, he would say, "Before my earnings used to be \$100 a week, and now they are reduced to \$60. So I still make a living, but I cannot set aside anything for a rainy day." This was the general answer of the small storekeeper.

MR. FAVREAU: Well, at page 10 of your brief you imply that there may or may not be a possible relationship between tradesmen and the pursuit of restrictive trade practices, but you do not enlarge upon it. Can you state what are your reasons for referring to trade marks as being a possible device to be used for the purpose of restrictive trade practices?

MR. SIDER: Well, is not a law relating to the maintenance of price ceilings closely connected with a trademark? Unless merchandise has a trademark, its origin cannot be traced, and therefore there would not be any question of price maintenance. The only time the manufacturer wishes to control the prices at the selling end is when they have a certain trade mark which can identify them with their respective companies. And I understand that one gentleman appearing before you claimed that companies are spending millions of dollars in advertising trade marks, and that it seems to do a lot of harm if prices are not maintained. And in my own personal opinion I think it would create serious repercussions if a law relating to price maintenance and trade marks were to be introduced.

MR. WICKWIRE: And you include brand named articles in that?

MR. SIDER: Yes.

THE CHAIRMAN: From all the studies you have made do you come to the conclusion that, in

spite of price cutters who, we have been told, are operating on a quite extensive scale, particularly in our cities that these trade mark owners have still been doing very well; is that your opinion?

MR. SIDER: Well, I think they are doing very well.

THE CHAIRMAN: Your brief seems to indicate that in your view they are making bigger profits than ever.

MR. SIDER: I have quoted those figures from the Montreal Stock Exchange, and some official publications by those companies.

As a matter of fact, I personally wrote to those companies, and I have quoted those figures from whatever quotations they themselves have given me.

THE CHAIRMAN: That is, you do not feel that the cutting of prices of trade marked goods has really done so much harm, is that it?

MR. SIDER: Well, to give you an example; I visited last year the warehouse occupied by the Northern Electric Company, if I might mention their name. They laid their hands on any empty warehouse space they could get. And those warehouses were filled to capacity with Northern Electric refrigerators. Company officials could not cope with that situation. They had to lay off personnel and cut down production. But all those thousands

upon thousands of refrigerators were still there. The company themselves, the very manufacturers of those refrigerators were anxious to get rid of those stocks, and to improve their liquid resources in the bank.

They, themselves, have entered into dealings with the big chain stores, giving them special quantity discounts, and special deals, trying to get rid of those stocks, I would say, at any price.

So I think that is an indication that when supply is too heavy, and it cannot be sold, or if next year the Marconi company is going to bring out a great revolution in television, or R.C.A. Victor has big stocks left over, because they are over-produced, then I think the companies themselves -- I know they do not want to admit it-- and that is my opinion -- would encourage price cutting to sell out their merchandise at any price, to overcome resistance of the public trying to buy.

THE CHAIRMAN: Thank you, Mr. Sider. I think that completes our sitting for today. I understand there are no more briefs for this afternoon, are there?

MR. DAVIDSON: That is correct, Mr. Chairman.

--- Whereupon the hearing adjourned until the following day, Thursday, September 16, 1954.

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